

departure in the alternative. The case was reset for the submission of Form 42B, Application for Cancellation of Removal for Certain Nonpermanent Residents.

The application was submitted on September 9, 2020. *See* Exhibit 2. A hearing on the merits was held on October 15, 2020. The Respondent was the sole witness. The Court reviewed and considered the documentary evidence submitted into the record. The Court now issues this written decision addressing Respondent's application for relief.

## II. EVIDENCE

### A. Documentary Evidence

- |        |  |
|--------|--|
| Exh. 1 | Notice to Appear (dated July 16, 2020)   |
| Exh. 2 | Form EOIR 42B, Application for Cancellation of Removal and Adjustment for Certain Non-Permanent Residents  |
| Exh. 3 | Respondent's Motion to Accept First Amendment of His Application Form EOIR 42B, Application for Cancellation of Removal and Adjustment for Certain Non-Permanent Residents |
| Exh. 4 | Respondent's Attorney Letter to Court Administrator and Notification of Filed Documents (dated October 1, 2020)  |
| Exh. 5 | Respondent's First Motion to Supplement Evidence for EOIR 42B, Application for Cancellation of Removal and Adjustment of Status for Certain Non-Permanent Residents        |
| Exh. 6 | Respondent's Second Motion to Supplement Evidence for EOIR 42B, Application for Cancellation of Removal and Adjustment of Status for Certain Non-Permanent Residents       |
| Exh. 7 | Addendum of Law: Cancellation of Removal for Non-Lawful Permanent Resident   |

### B. Summary of Testimony

#### 1. *Respondent Testimony*

Respondent testified that he was born in El Salvador on July 16, 1979. Respondent stated that he left El Salvador in January 2001 and arrived in the United States in April 2001. Respondent stated that he has not left the United States since he entered in 2001. Respondent has lived in Baton Rouge, Louisiana since 2005. Respondent provided tax documents from 2009 until 2016. Respondent did not pay taxes after the year 2016. Respondent does not own any property in the United States other than a 2000 Toyota Sienna and a 2006 Honda Odyssey. *See* Exhibit 3, page 60 and 109. Respondent purchased the Toyota Sienna in 2011 and the Honda Odyssey in 2017. Respondent has lived at [REDACTED] since 2005 and provided a letter from the landlord, [REDACTED]. *See* Exhibit 6, page 9.

Respondent's partner's name is [REDACTED]. They met in El Salvador where they also lived together. Respondent came to the United States in 2001 and his partner came in 2005 and they resumed living together. The couple have four children together: [REDACTED]

[REDACTED]. All of the children attend school. Respondent stated that [REDACTED] has Hashimoto which is one of the ten rarest diseases in the world. Respondent stated that when she was about 3 years old, they took her to the hospital because she was throwing up blood clots. Respondent stated that [REDACTED] sees a specialists every three (3) months and that either the Respondent or his partner take her to the doctor. She takes medication every day before bed. Respondent believes that if [REDACTED] does not take her medication, the disease will get worse. Respondent believes that [REDACTED] will have more problems with expenses and psychologically if he is removed. Respondents stated that his children speak some Spanish and that his children would not accompany him to El Salvador if he were to be removed.

Respondent stated that his son, [REDACTED] has health problems as well. Respondent stated [REDACTED] organs are growing inside of him and he will have surgery this month or next month. Respondent says he is at the specialist being checked. The doctor provided a letter to the court that he is being seen for elevated liver enzymes and obesity and that the doctor needs to perform an EGD to rule out celiac disease and also a liver biopsy. *See Exhibit 6, page 11.* Other than the letter from the doctor, no other medical records were submitted.

Respondent's partner, [REDACTED], works at a hotel approximately three (3) to five (5) hours and earns \$150.00-\$200.00, and approximately \$900.00 a month. She is paid \$9.00 per hour. Her work varies depending on how many rooms need to be cleaned. Currently, they are asking for loans and borrowing money to pay the bills. Respondent works in roofing.

On July 11, 2020, Respondent was arrested for domestic abuse battery. Respondent stated that he had been drinking and decided to leave the house when his partner grabbed him and scared him, elbowing her in the lip. Respondent's partner told one of the children to call the police. The police came and arrested him while he was sleeping. Respondent stated that his partner told the prosecutor that she was at fault and the case was dismissed by the court. Respondent stated that he and his partner have never been in a physical altercation before and that this was the first time. Respondent stated that they have been together for fifteen (15) years. The domestic abuse battery charge was dismissed on October 5, 2020. There were no other documents presented on the child endangerment charge. Other than the arrest for domestic abuse battery, Respondent has a prior traffic citation for no seat belt and no driver's license. Respondent stated that he believes this incident occurred around 2014.

On cross-examination, Respondent stated that he has taken [REDACTED] to medical appointments. DHS pointed out that although Respondent stated that his daughter had been to the doctor many times, they only submitted one letter from a doctor. Respondent stated that the doctor would not give the records to the child's mother. Respondent stated that [REDACTED] takes medication and that when taken as prescribed, she is medically okay. The only medical document presented for [REDACTED] is a letter from [REDACTED], dated July 21, 2020. The letter states, "[REDACTED] has a chronic thyroid condition that requires medication and is currently under my care." Exhibit 3, page 127. The letter does not contain any more information regarding her treatment or the severity of her condition.

On cross-examination by the government, Respondent stated that he has never had a driver's license. Respondent said he obtained a license but it is false and he used it to get insurance. Respondent stated that if he is stopped by the police, he shows his passport. Respondent stated that has never had a valid license but does have two vehicles titled in his name. Respondent admits to driving those vehicles.

On cross-examination, Respondent stated that he most recently worked in roofing. Respondent testified that he has worked as a roofer since 2005 and also performed some maintenance work for [REDACTED]. Respondent stated he would earn between \$16,000 and \$24,000 a year. Respondent did not file taxes until 2009 and filed through 2016. Respondent said they could not obtain an ITIN number and in 2009 he obtained one. Prior to that, he was paid in cash. Respondent stated that he did not file taxes after 2016 because work was bad and that was when he started working with [REDACTED] for cash. He would receive \$1500.00 in cash and the rent was also covered so the total was \$2400 a month. He worked some roofing in 2016 and in 2017 he started working with [REDACTED]. He returned to roofing in 2020. In 2019, when roofing, Respondent would work between three (3) to four (4) days a week. While working for [REDACTED] in 2019, Respondent stated he would have made approximately \$28,000, not counting any roofing jobs. Respondent stated that he did not file taxes for 2017, 2018, or 2019.

When questioned by the Court, Respondent stated that he filed taxes for 2009. That tax document does not contain a social security number or ITIN number on the forms. W-7 Form request for ITIN contains the same date as the 3/29/2010 tax forms. On the W-7, respondent marked the box that says he is a dependent of a U.S. citizen/resident alien. Respondent stated that his sister is a U.S. citizen and she petitioned for him in 2013/2014, but this does not explain the discrepancy on the W-7. The 2010 W2 does not contain any type of social security number or ITIN. On the 2010 taxes, respondent claims he is single and does not claim any of his children as dependents. That tax return also states, "For Info Only – Do Not File." Respondent could not explain the discrepancies.

Respondent stated that he used another person's social security card to place a vehicle in his name and then stated he did not remember. The title does have his name misspelled for the Toyota Sienna. Respondent then says they went to a notary public who gave them the title, registration and license plate. For the Honda Odyssey, Respondent stated that he has some friends who have an auction who help you with titles and registration and he does not know how they do it.

Respondent stated he has liability insurance on the vehicles. Respondent stated that he provided the insurance company with his passport and that they do that in Louisiana or well they did. Respondent previously stated that he had a license that was false to get insurance. Respondent now says, yes because it was not original.

Respondent stated that his daughter takes medication daily. Respondent stated that [REDACTED] does not take any medication at this time. Respondent did not submit any school records for any of the children. [REDACTED] and other children are good students, but [REDACTED] is not as good as she was before.

Respondent fears that if he were deported, his family will suffer. Respondent fears his partner will not be able to not manage the household and take care of the kids financially.

Respondent has family in the United States, but he and his partner receive little to no help from his family and they have had to obtain loans to pay the bills.

### III. APPLICABLE LAW

#### A. Credibility

Section 240(c)(4)(C) of the Act considers the following factors in the assessment of an applicant's, or witness's, credibility: his or her demeanor, candor, and responsiveness; the inherent plausibility of his or her account; the consistency between his or her oral and written statements; the internal consistency of such statements; the consistency of such statements with other evidence of record; any inaccuracies or falsehoods in such statements; whether or not such inaccuracy, falsehood, or inconsistency goes to the heart of his or her claim; and any other relevant factor. See INA § 240(c)(4)(C). There is no presumption of credibility; however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal. *Id.*

#### B. Cancellation of Removal

To be eligible for cancellation of removal under INA § 240A(b), Respondent must establish he (1) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application; (2) has been a person of good moral character during such period; (3) has not been convicted of an offense under INA §§ 212(a)(2), 237(a)(2), or 237(a)(3); and (4) establishes removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien admitted for lawful permanent residence. *See* INA § 240A(b)(1).

The ten-year period of good moral character is calculated backward from the date on which the final administrative decision is entered by the Immigration Judge or the Board. *Matter of Garcia*, 24 I&N Dec. 179 (BIA 2007); *Matter of Ortega-Cabrera*, 23 I. & N. Dec. 793, 797-798 (BIA 2005). ). INA § 101(f) lists several classes of individuals for whom good moral character cannot be established if a Respondent falls into one of those classes during the ten year period. The fact that any person is not within any of the foregoing classes shall not preclude a finding for other reasons such person is or was not of good moral character. Good moral character does not mean moral excellence or that it is not destroyed by a single lapse. *Matter of Sanchez-Linn*, 20 I&N Dec. 362, 366 (BIA 1991).

To establish exceptional and extremely unusual hardship, an applicant must demonstrate a qualifying relative would suffer hardship substantially different from or beyond, which would ordinarily be expected to result from the alien's deportation but need not show such hardship would be "unconscionable." The hardship must be beyond which was required in suspension of deportation cases. Hardship factors relating to the applicant may be considered only insofar as they might affect the hardship to a qualifying relative. *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 (BIA 2001).

Factors to be considered in determining the level of hardship include the qualifying relative's age, health, length of residence in the United States, and family and community ties in the United States and abroad. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 63. A lower standard of living, diminished educational opportunities, poor economic conditions, and other adverse country conditions in the country of removal are also relevant factors, but will generally be insufficient, in and of themselves, to support a finding of exceptional and extremely unusual hardship. *Matter of Andazola*, 23 I&N Dec. 319, 323-24 (BIA 2002); *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 63. However, all hardship factors should be considered in the aggregate to determine whether the qualifying relative will suffer hardship that is exceptional and extremely unusual. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 64; *see generally Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001) (evaluating the hardship standard under the former suspension of deportation statute). All relevant factors, though not "exceptional or extremely unusual" when considered alone, must be considered in the aggregate in determining whether "exceptional and extremely unusual hardship" exists. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 64.

### C. Post-Hearing Voluntary Departure

At the conclusion of proceedings under section 240, the Court may grant voluntary departure in lieu of removal for a period not to exceed 60 days. INA § 240B(b). To establish eligibility, the alien must prove he or she:

- (1) has one year of physical presence immediately preceding service of the NTA;
- (2) has good moral character for at least five years immediately preceding the application for voluntary departure;
- (3) is not removable under sections 237(a)(2)(A)(iii) or 237(a)(4);
- (4) has the means to depart the United States and intends to do so;
- (5) must post a voluntary departure bond, in an amount that must be at least \$500, within five days of the voluntary departure order;
- (6) has not been previously permitted to so depart after having been found inadmissible under section 212(a)(6)(A)

*See* INA § 240B(b)(1), (b)(3), (c); 8 C.F.R. § 1240.26(c)(2)-(3).

The alien bears the burden to establish he or she is eligible for voluntary departure and merits a favorable exercise of discretion. *See Matter of Gamboa*, 14 I&N Dec. 244 (BIA 1972); *see also Matter of Arguelles*, 22 I&N Dec. 811 (BIA 1999). To determine whether a favorable exercise of discretion is warranted, the Court must weigh the relevant adverse and positive factors.

#### IV. ANALYSIS

##### A. Cancellation of Removal for Certain Nonpermanent Residents

###### 1. Credibility

Upon careful consideration of all the facts of record individually and cumulatively, the Court finds that the Respondent is not credible. Respondent's testimony shows inconsistencies in paying taxes and filing of tax documents. Respondent's testimony also shows possible violations of fraud and using false identification to obtain automobile insurance and vehicle titles. These are some of the inconsistencies in Respondent's testimony that the Court must take into consideration. Therefore, the Court will consider all of the testimonial evidence.

###### 2. Statutory Eligibility

The parties agreed Respondent sufficiently established ten years of continuous physical presence in the United States. As such, the only remaining issues are whether Respondent: (1) established good moral character for the requisite 10-year period; (2) has no criminal convictions under sections 212(a)(2), 237(a)(2), or 237(a)(3) of the Act; and (3) established that his removal from the United States would cause an exceptional and extremely unusual hardship to a spouse, parent, or child, who is a U.S. citizen or lawful permanent resident. *See* INA § 240A(b)(1).

Respondent has no criminal convictions under sections 212(a)(2), 237(a)(2), or 237(a)(3) of the Act that would disqualify him from establishing good moral character. Respondent only has one arrest for domestic abuse battery on July 11, 2020. However, that charge was dismissed on October 5, 2020. Respondent stated that he has a traffic citation for no seat belt and no driver's license that he alleges occurred in 2014. The Court does not find Respondent falls within a per se category barring good moral character under INA § 101(f). And when considering various factors under INA § 101(f), the Court finds Respondent has established good moral character.

Nevertheless, the Court finds Respondent has not met his burden of proving a qualifying relative would experience exceptional and extremely unusual hardship upon his removal. While [REDACTED] may have a medical condition which requires treatment, the treating physician's letter evidences that the condition is being maintained. Respondent did not present any medical evidence of the seriousness of her condition beyond a one page letter from the treating physician which stated she has a chronic thyroid condition which he is treating.

[REDACTED] was examined by a doctor for elevated liver enzymes and other issues, but there is nothing to indicate that he is not receiving adequate healthcare treatment for his issues. Both children would continue to receive their necessary medical treatment, with or without the Respondent being in the United States.

While Respondent's partner, [REDACTED], works part time cleaning hotels, there is nothing to indicate that the children are in poor care financially and health wise. Thus, while the Court acknowledges the family may struggle financially, the BIA is clear that economic hardship in and of itself does not establish the requisite exceptional and extremely unusual hardship required for a grant of cancellation of removal. *See Monreal-Aguinaga*, 23 I&N Dec. at 63-64. The evidence does not establish they would experience hardship substantially beyond which

is ordinarily expected from the removal of a loved one. Therefore, Court finds Respondent failed to establish exceptional and extremely unusual hardship to a U.S. citizen contemplated under the Act. The request for cancellation of removal is denied for lack of statutory eligibility.

### 3. Discretion

Had Respondent satisfied the statutory requirements, Respondent is not deserving of discretionary relief. *See* INA § 240A(b)(1). In balancing the equities of Respondent's case, the Court finds the negative factors outweigh any positive factors Respondent may have presented. The positive factors in Respondent's case include his longtime residence in the United States and his family ties. Respondent arrived in the United States in April 2001 and has lived in Baton Rouge, Louisiana since 2005. Respondent and his partner, [REDACTED], have lived together since 2005 and currently have four children.

As to negative factors, the Court has a serious concern about Respondent's tax documents and filings. Respondent has worked as a roofer since 2005, but did not reportedly file taxes until 2009 stating that he could not obtain an ITIN number. According to Respondent, he stated that he filed for taxes in 2009. However, that tax document does not contain a Social Security number or ITIN on any forms provided. On Respondent's W-7, he indicated that he is a dependent of the United States citizen or resident alien. Respondent stated his sister petitioned for him, which occurred in 2013/2014. On Respondent's 2010 W-2, it did not contain a Social Security or ITIN number. On Respondent's 2010 taxes, he claimed that he is single and did not claim any of his children as dependents. That particular tax document also stated, "For Info Only-Do Not File." Respondent did not file taxes until 2009 and filed through 2016. Respondent worked as a roofer and did maintenance work for his landlord, [REDACTED]. As a roofer, Respondent estimated that he earned between \$16,000 and \$24,000 a year. Respondent alleged that [REDACTED] paid him in cash amounts of about \$1,500 and had his rent covered totaling \$2,400 a month. Respondent stated that he did not file taxes in 2017, 2018, and 2019. Respondent's inconsistent payment or lack of payment of taxes are serious issues that speak against his credibility in cancellation of removal. It appears Respondent may have committed income tax fraud or was not fully truthful in the filing of his taxes. Nevertheless, Respondent is ultimately responsible for his tax information that he filed. Respondent knew the information in his tax filings was not the truth, and failed to take the proper measures to ensure that his tax filings were proper.

Respondent's testimony regarding his lack of proper identification and falsifying of title documents is another negative factor. Respondent has never had a driver's license, but has two vehicles and said he obtained a false license to get insurance. Respondent shows his passport and not a driver's license if stopped by authorities. Respondent used another person's Social Security card to place the vehicle in his name. The title of the Toyota Sienna has his name misspelled. Respondent alleges that he acquired the Honda Odyssey through an auction and some friends helped him acquire falsified titles. Respondent also alleges that he went to a notary public who provided a title, registration, and license plate. Respondent's use of falsified documents in order to obtain titles on his vehicles and insurance is a negative factor that goes against his credibility in cancellation of removal.

Considering both the positive and negative factors in Respondent's case, the Court finds that the negative factors outweigh the positive equities here. The Court finds Respondent does not merit a favorable exercise of discretion.

### B. Voluntary Departure

Respondent also requested voluntary departure. After reviewing the evidence submitted into the record, the Court will grant the Respondent's request for voluntary departure. The Respondent has been in the United States since 2001. He is not removable pursuant to sections 237(a)(2)(A)(iii) or 237(a)(4) of the Act. He has established good moral character for the five years immediately preceding his application for good moral character. The Respondent has one reported arrest for domestic abuse battery. However, the domestic abuse battery charge was dismissed on October 5, 2020. Respondent has four United States citizen children and a United States citizen sister who could potentially petition for him in the future. Upon weighing the equities of the Respondent's case to balance the totality of the evidence, the Court concludes that Respondent does merit a favorable exercise of discretion for the purposes of voluntary departure. Therefore, the Court grants Respondent's request for voluntary departure.

Accordingly, the following orders shall be entered:

**ORDERS: IT IS HEREBY ORDERED that Respondent's application for cancellation of removal for certain nonpermanent residents is DENIED.**

**IT IS HEREBY FURTHER ORDERED that Respondent request for voluntary departure under SAFEGUARDS is GRANTED. Respondent must depart the United States on or before [REDACTED].**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Immigration Judge

Appeal Due Date: [REDACTED]

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### CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☐ ALIEN'S ATTY/REP ☐ DHS

DATE: \_\_\_\_\_ BY: COURT STAFF \_\_\_\_\_

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

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## Applicant Details

First Name	Rodney
Middle Initial	R
Last Name	Hester
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:rjhester42@gmail.com">rjhester42@gmail.com</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>9404 Northland Road</div> <div>City</div> <div>The Village</div> <div>State/Territory</div> <div>Oklahoma</div> <div>Zip</div> <div>73120</div> </div> </div>
Contact Phone Number	8174010706

## Applicant Education

BA/BS From	Texas Tech University
Date of BA/BS	May 2017
JD/LLB From	Oklahoma City University School of Law
	<a href="http://law.okcu.edu/">http://law.okcu.edu/</a>
Date of JD/LLB	May 14, 2023
Class Rank	50%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	No

## Bar Admission

## Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

## Specialized Work Experience

### Recommenders

Hance, Kent  
khance@hslawmail.com

Wedge, Douglas  
douglas\_wedge@okwb.uscourts.gov  
405-609-5711

Roth, Jim  
jaro@okcu.edu  
(405) 208-5440

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**Rodney R. Hester Jr.**

817-401-0706 • rjhester42@gmail.com  
9404 Northland Road The Village, OK 73120

March 22, 2023

Karen Mitchell  
United States District Court  
1100 Commerce Street, Room 1452  
Dallas, TX 75242

Dear Ms. Mitchell:

I am writing to apply for the available clerkship with the Honorable Irma C. Ramirez. I believe my prior legal work experience in the areas of personal injury, criminal law, and bankruptcy will make me an asset for the court.

Prior to law school, I interned at the Federal Public Defenders Office in Lubbock, Texas. My legal work included calculation of federal sentencing ranges for clients and drafting character reference letters based on recommendations from others to be presented to the court at sentencing.

For the first two and half years of law school, I worked full time as a case manager at Parrish DeVaughn Injury Lawyers in Oklahoma City and attended night classes. At Parrish DeVaughn I commonly met with clients and assisted in settlement negotiations.

During my third year of law school, I externed at Philips Murrah P.C. in their Oklahoma City office. There I worked alongside attorneys practicing in an array of practice areas including commercial litigation, employment law, and energy law.

Lastly, this past summer I was honored to intern at the United States Bankruptcy Court where I observed proceedings before magistrate and district court judges in the Western District of Oklahoma.

Thank you for your time and consideration.

Sincerely,

Rodney Hester

**Rodney R. Hester Jr.**

817-401-0706 • rjhester42@gmail.com  
9404 Northland Road The Village, OK 73120

**EDUCATION**

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**Oklahoma City University School of Law**

*Candidate for Juris Doctor*

Honors: CALI Awards – Civil Procedure I & II

Oklahoma City, OK

May 2023

**Texas Tech University**

*B.A. in Political Science*

Activities: Texas Tech Football Team

Lubbock, TX

May 2017

**EXPERIENCE**

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**U.S. Bankruptcy Court, Western District of Oklahoma**

*Intern*

Oklahoma City, OK

June 2022 – August 2022

- Developed knowledge of bankruptcy proceeding by attending oral arguments and dismissal proceedings.
- Observed Federal Magistrate and District Judges presiding over an array of criminal and civil proceedings including *McGirt* trials. Shadowed Judge Erwin in facilitation of settlement conferences.
- Assisted with clerical task, primarily scanning formerly filed docket sheets into electronic form.

**Phillips Murrah P.C.**

*Legal Extern*

Oklahoma City, OK

January 2022 – April 2022

- Prepared memoranda regarding the application of Oklahoma's Open Meetings Act to a newly formed rural water district.
- Reviewed a memorandum of understanding between the Department of Labor and National Labor Relations Board concerning their five-year collaboration. Drafted an article outlining possible impacts on firm clients for distribution and publication on the firm's website.

**Parrish DeVaughn Injury Lawyers**

*Case Manager*

Oklahoma City, OK

May 2019 – October 2021

- Provided support for an average of ninety clients through the firm's internal claims process for auto collisions.
- Support included contacting clients bi-weekly to manage treatment, assist with property damage, and drafting demand letters to the insurance companies.
- Prepared pleadings, discovery responses, subpoenas, summons for process service, and coordinated depositions for cases where lawsuits were filed.

**Morales & Sparks, PLLC**

*Legal Assistant*

Austin, TX

September 2018 – May 2019

- Drafted parole packets including completed rehabilitation programs and character reference letters in support of inmate release.

NAME: Rodney R Hester

STUDENT ID: B00101329 BIRTHDATE: 13-MAY  
\*\*\*-\*\*-7048



COURSE NUMBER	COURSE TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	COURSE NUMBER	COURSE TITLE	GRADE	CREDIT HOURS	QUALITY POINTS
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Course Level: Professional  
Only Admit: 2019 Summer

Current Program  
Juris Doctor  
College : School of Law  
Major : Law

Comments Continued:  
All classes during the Spring 2020 semester, other than those that were completed in January, were graded Cr/NC because of a public health emergency.  
School of Law  
Law

INSTITUTION CREDIT:

===== 2019 Summer =====  
School of Law  
Law

LAW 7192 LGL METHOD:INTR ANGLO-AMER SYS C+ 2.00 4.66

	EHRS	GHSR	Qpts	GPA
Current	2.00	2.00	4.66	2.330
Cumulative	2.00	2.00	4.66	2.330

===== 2019 Fall =====  
School of Law  
Law

LAW 5223	LEGAL RESEARCH & WRITING I	B-	3.00	8.01
LAW 7071	LEGAL ANALYSIS	CR	1.00	0.00
LAW 7103	CONTRACTS I	B	3.00	9.00
LAW 7504	TORTS	B	4.00	12.00

	EHRS	GHSR	Qpts	GPA
Current	11.00	10.00	29.01	2.901
Cumulative	13.00	12.00	33.67	2.806

Good Standing

===== 2020 Spring =====  
\*\*\*\*\* CONTINUED ON NEXT COLUMN \*\*\*\*\*

LAW 5232	LEGAL RESEARCH & WRITING II	CR	2.00	0.00
LAW 7080	LEGAL ANALYSIS II	CR	0.00	0.00
LAW 7223	CONTRACTS II	CR	3.00	0.00
LAW 7404	PROPERTY	CR	4.00	0.00

	EHRS	GHSR	Qpts	GPA
Current	9.00	0.00	0.00	0.000
Cumulative	22.00	12.00	33.67	2.806

===== 2020 Fall =====  
CALI AWARD "CIVIL PRACTICE & PROCEDURE I"  
School of Law  
Law

LAW 7090	LEGAL ANALYSIS III	S	0.00	0.00
LAW 7123	CONSTITUTIONAL LAW I	B-	3.00	8.01
LAW 8143	LEGAL PROFESSION	B	3.00	9.00
LAW 8303	CIVIL PRACTICE & PROCEDURE I	A	3.00	12.00

	EHRS	GHSR	Qpts	GPA
Current	9.00	9.00	29.01	3.223
Cumulative	31.00	21.00	62.68	2.985

Good Standing

===== 2021 Spring =====  
CALI AWARD "CIVIL PRACTICE & PROCEDURE II"  
\*\*\*\*\* CONTINUED ON PAGE 2 \*\*\*\*\*

14-JAN-2023

Issued To: RODNEY R HESTER

The Family Educational Rights and Privacy Act of 1974 provides that transcripts may not be released to anyone without written consent of this student.

Charles L. Monnot  
Charles L. Monnot

NAME: Rodney R Hester

STUDENT ID: B00101329  
\*\*\*--7048

BIRTHDATE: 13-MAY



COURSE NUMBER	COURSE TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	COURSE NUMBER	COURSE TITLE	GRADE	CREDIT HOURS	QUALITY POINTS
Institution Information continued: School of Law Law					Institution Information continued: EHRS GHRS Qpts GPA Current 15.00 13.00 39.00 3.000 Cumulative 64.00 52.00 149.71 2.879				
LAW 7023	CRIMINAL LAW	B-	3.00	8.01	===== 2022 Summer =====				
LAW 7233	CONSTITUTIONAL LAW II	C-	3.00	5.01	School of Law				
LAW 8403	CIVILPRACTICE AND PROCEDURE II A		3.00	12.00	Law				
EHRS GHRS Qpts GPA					=====				
Current	9.00	9.00	25.02	2.780	LAW 6262	ARBITRATION ADVOCACY	B+	2.00	6.66
Cumulative	40.00	30.00	87.70	2.923	EHRS GHRS Qpts GPA				
Good Standing					Current	2.00	2.00	6.66	3.330
===== 2021 Fall =====					Cumulative	66.00	54.00	156.37	2.896
School of Law					===== 2022 Fall =====				
Law					School of Law				
LAW 7013	AGENCY & UNINCORP BUS ASSOC	B-	3.00	8.01	=====				
LAW 8133	EVIDENCE	B	3.00	9.00	LAW 6403	PRETRIAL LITIGATION	A	3.00	12.00
LAW 9293	LEGISLATION & REGULATION	C	3.00	6.00	LAW 7152	ADVANCED BAR STUDIES	CR	2.00	0.00
EHRS GHRS Qpts GPA					LAW 7802	SEM:LAW, POLICY, & SOCIAL JUST	B	2.00	6.00
Current	9.00	9.00	23.01	2.557	LAW 8333	IMMIGRATION LAW	A-	3.00	11.01
Cumulative	49.00	39.00	110.71	2.839	LAW 9853	PRODUCTS LIABILITY	B	3.00	9.00
Good Standing					EHRS GHRS Qpts GPA				
Last Standing: Good Standing					Current	13.00	11.00	38.01	3.455
===== 2022 Spring =====					Cumulative	79.00	65.00	194.38	2.990
School of Law					===== 2023 Spring =====				
Law					IN PROGRESS WORK				
LAW 2044	WILLS, TRUSTS & ESTATES	B	4.00	12.00	LAW 6611	STRATEGIES FOR SUCCESS ON MPT		1.00	IN PROGRESS
LAW 6062	LITIGATION PRACTICE EXTERNSHIP	CR	2.00	0.00	LAW 7151	ADVANCED BAR STUDIES II		1.00	IN PROGRESS
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LAW 8203	SECURED TRANSACTIONS	B	3.00	9.00	LAW 9074	TRIAL PRACTICE		4.00	IN PROGRESS
LAW 8433	CORPORATIONS	A-	3.00	11.01	LAW 9363	ESTATE PLANNING		3.00	IN PROGRESS
***** CONTINUED ON NEXT COLUMN *****					In Progress Credits 12.00				
					***** CONTINUED ON PAGE 3 *****				

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Charles L. Monnot  
Charles L. Monnot

2

NAME: Rodney R Hester

STUDENT ID: B00101329  
\*\*\*-\*\*-7048

BIRTHDATE: 13-MAY



COURSE NUMBER	COURSE TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	COURSE NUMBER	COURSE TITLE	GRADE	CREDIT HOURS	QUALITY POINTS
TOTAL INSTITUTION	79.00	65.00	194.38	2.990					
TOTAL TRANSFER	0.00	0.00	0.00	0.000					
OVERALL	79.00	65.00	194.38	2.990					
*****	END OF TRANSCRIPT	*****							



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*Charles L. Monnot*  
Charles L. Monnot

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TEXAS TECH UNIVERSITY SYSTEM

Kent Hance, Chancellor Emeritus

Dear Judge/Justice:

I am honored to write this letter of recommendation for Rodney Hester in his endeavor to become a judicial clerk in your chambers. Mr. Hester is a former student of my Seminar in Business Leadership at Texas Tech University. Mr. Hester was a standout student by the questions he asked, the respect he showed, and his attentiveness to my class. With this, Mr. Hester has demonstrated an exceptional work ethic, and I am confident that he will be an outstanding judicial clerk.

Mr. Hester displayed his time management skills by pursuing his bachelor's degree in Political Science while being a student athlete on the Texas Tech football team. Following his undergraduate education, he went on to pursue Law School at the Oklahoma City University School of Law where he achieved the CALI Awards in Civil Procedure I and II. In addition, Mr. Hester is a candidate for Juris Doctor. While in law school Mr. Hester has had multiple internships and job opportunities where he has gained firsthand experience.

I believe Mr. Hester will bring effective organization, communication, and interpersonal skills to your chambers. For these reasons, I am recommending him without reservation and with the sincere belief that he should be your judicial clerk.

Yours very truly,

A handwritten signature in black ink that reads "Kent Hance".

Kent R. Hance  
Chancellor Emeritus

PO Box 4226 | Lubbock, Texas 79409 | T 806.742.3701 | F 806.742.3703



UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA  
215 DEAN A. MCGEE AVENUE SUITE 147  
OKLAHOMA CITY, OK 73102

Douglas Wedge  
Court Clerk

March 27, 2023

**VIA OSCAR**

The Honorable Irma C. Ramirez  
U.S. District Court  
Northern District of Texas

Judge Ramirez:

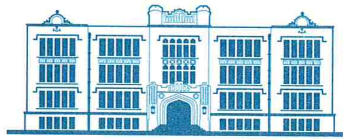
I am contacting you to share the highest recommendation for Rodney Hester (RJ) to serve as your law clerk. I had the privilege of meeting and working with RJ during Summer 2022 when he served as an intern in the Clerk's Office for the United States Bankruptcy Court for the Western District of Oklahoma. RJ impressed me on multiple levels. We discussed various bankruptcy and other legal issues, and his grasp of the law is strong. He is a team player. We asked him to perform some laborious work of scanning paper dockets and storing these in electronic format. He did so gladly; in fact, he scanned over 20,000 docket sheets last summer. He displayed great initiative and curiosity, observing multiple bankruptcy, civil, and criminal hearings and trials as well as settlement conferences to deepen his understanding of the judicial process. He fit in well in our office, and I admire his experience as a student-athlete at Texas Tech University. Student-athletes are excellent employees with time management skills they developed as they balanced the demands and workloads of school and sport. They value goal-setting and the importance of working together as a collective to reach these goals. RJ fits this mold to a T. He has a bright future, and I recommend him most highly to serve as a law clerk for you.

If you have any questions or would like more information about my experiences with RJ, please contact me. My email address is [douglas\\_wedge@okwb.uscourts.gov](mailto:douglas_wedge@okwb.uscourts.gov), and my telephone number is (405) 609-5711. I appreciate your time and your considering this recommendation. I wish you good luck in the law clerk selection process.

Sincerely,

s/Douglas E. Wedge

Douglas E. Wedge



OKLAHOMA CITY UNIVERSITY  
SCHOOL of LAW

September 15, 2022

To Whom It May Concern:

It is a pleasure to recommend Rodney Hester. He is a currently a fourth-year law student seeking a clerkship upon graduation from Oklahoma City University School of Law. Rodney started out in law school as a night student working full time for Parrish DeVaughn Injury Lawyers during the day. Rodney has shown throughout his tenure in law school that respect and steadfastness are among his most valuable traits.

My name is Jim Roth, the Dean of Oklahoma City University School of Law. I had the pleasure of not only being a part of the process of admitting Rodney, but also worked alongside him as he externed for Phillips Murrah P.C., a law firm where I also serve as a Director. I have heard first-hand the impact he had when Byrona Maule, a colleague of mine, sent a firm wide email praising his work ethic in assisting her in coming to a resolution in an alleged wrongful termination case by compiling a deposition summary from a prior case.

Among other things Rodney is involved locally in the community through his local church, Crossings Community Church. He serves there in their young adult ministry as a small group leader by discipling other young men around his age. On a more personal note, I believe Rodney Hester to be an outstanding person and he will be a lawyer who will make our profession and our school proud.

Feel free to contact me if you have any questions you fell would help you in the evaluation process.

With best regards,

Jim Roth  
Dean and Professor of Law

OFFICE OF THE DEAN

800 N. HARVEY AVENUE | OKLAHOMA CITY, OK 73102 | T: 405.208.5440 | JAROTH@OKCU.EDU | LAW.OKCU.EDU

**United States Court of Appeals  
For the Fourteenth Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

Case No. CR – 001-2020

MR. ALEX SPRINGER,

Defendant-Appellant.

---

**APPELLANT’S OPENING BRIEF**

---

Appeal from the United States District Court for the District Court of Westville  
Judge Paul Clark  
Case No. 001-2020

Rodney Hester  
The Law Firm  
2020 High Road, Suite 1  
Arlington, Texas 76017  
Telephone: (817) 000-000

**ORAL ARGUMENT IS REQUESTED**

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### **Statement of Related Cases**

There are no prior related cases.

### **Statement of Jurisdiction**

The United States District Court of Westville had jurisdiction over the matter pursuant to 18 U.S.C. § 3231. Mr. Springer was convicted after a jury trial of possession of an analogue drug in violation of 21 U.S.C. § 813.

After sentencing, the judgment and commitment order were entered onto the docket January 16, 2020. The notice of appeal was timely filed in accordance with Rule 4(b)(1), F.R.A.P., on January 25, 2020. The Court's jurisdiction derives from 28 U.S.C. § 1291. This appeal is from a final judgment entered against Mr. Springer.

### **Statement of the Issues**

If an officer finds ambiguity of a third party consenting to a search they must inquire further. Ms. Springer was not using the closed shoebox and had no further plans to use it after she placed it on Mr. Springer's dresser. Would the appellate court determine the trial court erred in permitting the search of the shoebox to be admitted?

The law in describing "knowingly" shifts the burden on the Government to prove Mr. Springer knew tazz was a controlled substance. Mr. Springer only knew tazz had similar effects to coffee as a stimulant when he sold the substance in the public to his customers. Did the trial court err by instructing the jury that Mr. Springer "knowingly" possessed and sold a controlled substance?

### Statement of the Case

The police only asked to search the apartment because of a witness who appeared to see the handle of a gun sticking out of a potential perpetrators waistband. During the search of the apartment Mr. Springer lived in no gun was found. And when Mr. Springer was arrested and searched outside of his apartment no gun was found.

When officers arrived at Ms. Springer's residence, she informed them that she abided there with her son Alex Springer who had just left. Officers asked permission to search the apartment because they had a tip that a perpetrator alleged to be carrying a gun had been seen walking into the apartment unit. She informed officers that she did not believe her son owned a gun. But she consented to a search of the apartment, nonetheless. Aplt. App at 5.

During the search of the apartment officers found a closed shoebox that contained a large number of white tablets. *Id.* at 2. Upon initially encountering the shoebox, officers asked Ms. Springer if it belonged to her. She told officers it was from a pair of her old shoes, and that she had set the shoebox on the dresser a "a while back." *Id.* Even though the shoebox originally belonged to Mrs. Springer she informed officers that it was on the dresser that Alex Springer had placed his clothes in. *Id.* "Without asking any further questions" the officers opened and searched the shoe box. *Id.* According to Ms. Springer and the arrest report the shoebox was in the "area of the apartment that belonged to Alex." *Id.* The police report stated the "shoebox...which is in an alcove ...in the opposite corner from the other bed" indicating it was in Mr. Springer's corner of the apartment.



Mrs. Springer informed officers that the items in the box were not hers. Ms. Springer told officers that she had no plans to use the shoebox after she had placed it on the dresser. *Id.*

Mr. Springer was returning home and fitting the description of the alleged gun owner; he was asked to identify himself. After being identified, Alex was searched for a gun to no avail and arrested for possession of a controlled substance with intent to distribute. After testing, the tablets were classified as tazz. *Id.* at 12. Tazz is not “significantly addictive ” but is an analogue substance that has been prohibited because of its other similar effects to cocaine. *Id.*

Mr. Springer admitted to selling tazz in local businesses without hiding any of his transactions because he did not know tazz was illegal. One of his locations for dispensing tazz was two blocks away from a police station. *Id.* at 6. Before speaking with his nephew, Mr. Springer had never heard of tazz. Mr. Springer even learned the name “tazz” from his nephew who described it as “the best form of energy.” *Id.*

After speaking with his nephew Mr. Springer decided to test making tazz by purchasing and combining the two over the counter drugs “Dayflu and Sinafed.” *Id.* After testing to ensure he combined the drugs properly, Mr. Springer began selling tazz in public places. The only precaution Mr. Springer took was to inform his customers not to tell others where they were getting their tazz because he wanted to make sure that his supply was not depleted.

During the time Mr. Springer conducted business selling tazz he never concealed his actions or thought of them as being illegal. *Id.* at 7. Sabrina Schmidt, one of Mr. Springers customers said that he described tazz as “perfectly legal.” *Id.* at 8. Ms. Schmidt was

informed that the substance was similar to coffee as Mr. Springer's nephew. And when she consumed tazz she experienced an energy boost. *Id.* Sabrina informed officers that she did not purchase anymore tazz from Mr. Springer because he asked her to conceal his name for inventory reasons. But Mr. Springer never told her that he would not do business with her again. And Sabrina learned of tazz and Mr. Springer through a friend of her own. Mr. Springer's last words to officers were "at all times I was confident my business was legal and took no steps to hide the transactions. *Id.* at 7.

### Summary of Argument

Even if the Government were to prove that Mr. Springer knowingly distributed tazz as an analogue drug, the search of the shoebox located on Alex's dresser was illegal because the officer should have asked further questions about ownership of the shoebox. The shoebox was located on Mr. Springer's dresser and was no longer being used by Ms. Springer. Ms. Springer's consent to search the apartment for a gun did not give officers free reign to search Mr. Springer's personal property.

Yes, the Government may use circumstantial evidence in proving the substance was controlled. But this does overcome their burden of proving Mr. Springer knew the tazz was analogue drug to cocaine and that his distribution was illegal. Mr. Springer sold tazz in public places and described it as a stimulant and replacement for coffee. The Government gives little evidence to support that Mr. Springer knew tazz was illegal. The fact that Mr. Springer sold tazz as a stimulant should not have been enough to convict.

### Argument

**1. The Government did not perform a reasonable search of Mr. Springer's shoe box when they asked his mother if the box belonged to her and did not inquire further.**

The standard of review for a violation of the fourth amendment defining illegal searches and seizures is de novo and the burden falls on the Government to prove the search was reasonable. *United States v. White*, 584 F.3d 935, 944 (10th Cir. 2009). Officers continuing to search an area where the consenters rights are “ambiguous” without further inquiry is unlawful. *United States v. Peyton*, 745 F.3d 546, 554 (D.C. Cir. 2014).

The lower court stated that the level of ambiguity in search of the shoebox was “very small.” Aplt. App. at 13. Mr. Springer on this appeal of the courts final decision would argue that the level of ambiguity is wider than the lower court admits to. The level of ambiguity is what led to an unlawful search and conviction of Mr. Springer. The shoe box was in the area of the apartment belonging to Mr. Springer. With the apartment being a studio, this gave more reason for the officers to inquire which areas in the apartment were Mr. or Ms. Springers.

Ms. Springer did not have the right to consent to a search of Mr. Springer's property in her apartment without his permission. “A homeowner's consent to a search of the home may not be effective consent to a search of a closed object inside the home.”. *United States v. Karo*, 468 U.S. 705, 725, 104 S.Ct. 3296, (1984). The shoe box was “closed” in Mr. Springer's area of the apartment. Ms. Springer's use of the shoebox ended after she bought the shoes and set it on Mr. Springer's dresser and abandoned it.

**a. In a search that produces evidence to convict, the search must be reasonable and authorized under legal consenting authority.**

In *United States v. Matlock*, 415 U.S. 164 (1974) the evidence supported authoritative consent to a girlfriend who was cohabitating with her boyfriend and found they had common authority over the bedroom both occupied. Mr. Springer lived with his mom and their beds were in separate corners of the apartment indicating distinction in each other's property. The officers made little inquiry to the shoe box after they found that it came from a pair of shoes that Ms. Springer had purchased. Ms. Springer said, "When police reached my son's area of the apartment, they asked me whether a particular shoes box was mine." Aptl. App at 5. If officers had asked, she would have stated that she had not used the shoe box and "had no plans to use it." *Id.* This fact is distinguishable from *Matlock* where the court held the search was under legal consenting authority. 415 U.S. at 177.

The officers erred in determining no further inquiry was required to search the shoe box. The Court should adopt *Peyton* for its standard of review on the search because the officers did encounter an ambiguous circumstance when they asked permission to search the shoebox and did not inquire further. The mutual use of the shoebox came into question at the moment they asked Ms. Springer if the shoe box was hers. Simply stating where the shoebox came from should not satisfy the mutual use test outlined in *Peyton*. The test would have the officers inquire further to see if Mrs. Springer had consenting authority over the shoe box.

Officers cannot accept the consent of a third party to search another's property if the third party lacks authority. *State v. Westlake*, 158 Idaho 817, 822, 353 P.3d 438 (Ct. App. 2015). *Westlake* aligns with the Supreme Court under *Rodriguez* which uses a "totality of the circumstances" approach in finding for legal third-party consent of another's property. *Illinois v. Rodriguez*, 497 U.S. 177, 110 S. Ct. 2793, (1990). *Westlake* orders "the test is whether, under the totality of the circumstances, the officers had a reasonable suspicion that the item was owned, possessed, or controlled by the occupant who consented to the search." 158 Idaho at 823. The officers showed their reasonable suspicion of ownership when they asked if the shoebox belonged to Ms. Springer. Officers made a false presumption of thinking Ms. Springer controlled the box because it came from a pair of her shoes. But after the illegal search of the shoebox, Ms. Springer said the property in it was not hers.

**b. The shoebox on Alex's dresser was in the area of the apartment belonging to him.**

A third party has the right to consent to a search of property if they have satisfied two conditions. *United States v. Snype*, 441 F.3d 119,136 (2d Cir. 2006). First the consenting party need have access to the area. Second the consenting party needs authority over the area, substantial interest in area, or permission from the other party. *Id.* Mrs. Springer did have access to Mr. Springer's property. But she did not have authority. It was Mr. Springer who possessed property in that area opposite from Ms. Springers corner of the apartment. Aplt. App. at 2. She did not have substantial interest in the area as she had no further plans of using the shoebox. *Id.* at 5. Ms. Springer was even unaware that Mr.

Springer had started using the box until the officers searched. *Id.* Nowhere in the record is Ms. Springer given permission from Alex to search his property. Ms. Springer did not meet the *Snype* two-prong standard needed for consent. She did not have authority, common interest, or permission from Mr. Springer to consent for a search of his property. 441 F.3d at 136.

**c. Alex had an expectation of privacy that was breached when officers searched the closed shoebox on his dresser.**

Because the shoebox was where Mr. Springer's property resided, Ms. Springer did not have authority to consent to a search due to Alex's expectation of privacy. In *Fultz* the consenter did not have the proper authority over closed boxes in the garage that belonged to her roommate. *United States v. Fultz*, 146 F.3d 1102, 1104 (9th Cir. 1998). In *Fultz* the roommate had a "reasonable expectation of privacy" and the third party had "no authority to consent." *Id.*

A resident still has a right to privacy even if a closed container is in an area not exclusively controlled by the owner. *United States v. Davis*, 332 F.3d 1163, 1167 (9th Cir. 2003). The *Davis* test is "mutual use and joint access." *Id.* at 1169. Ms. Springer was not using the box after she placed it on Mr. Springers dresser. *Davis* did not find officers could have reasonably believed the third party had authority to consent the search a closed gym bag. *Id.* Even if the officers truly believed Ms. Springer was still using or had control over the box since it came from a pair of her shoes, "[a]n officers mistaken belief...cannot establish apparent authority." *Id.* at 1170. The Government must prove that Ms. Springer

had authority over the shoe box, not that it simply came from a pair of her shoes. Because the Government cannot prove authority, officers should have inquired further.

**2. Mr. Springer did not have knowledge that tazz was an analogue to cocaine and an illegal controlled substance.**

The court must view the facts of Mr. Springer knowing he was producing and selling an analogue substance in a light favorable to the Government. And Mr. Springer “must show based on the facts a reasonable trier of fact could not have come to the same conclusion.” *United States v. Valle*, 807 F.3d 508, 515 (2d Cir. 2015). Mr. Springer not knowing that tazz was an analogous substance is crucial and the lower court was in error satisfying the element for the Government. Justice Roberts in *McFadden* concurred, “it is a defense he did not know the substance was controlled.” *McFadden v. United States*, 135 S. Ct. 2298, 2308 (2015).

*McFadden* lays out the test with two alternatives that must be proven even when reviewing the evidence in a light most favorable to the Government.

*McFadden* requires the government to show that the defendant: (1) knew the drug in question had both a similar chemical structure and similar effects to a controlled substance, or (2) knew the drug in question was unlawful under the Analogue Act or CSA. 135 S.Ct. at 2305. Proof that the defendant merely knew the drug he sold had a similar effect to a controlled substance is never enough. *United States v. Makkar*, 810 F.3d 1139, 1146 (10th Cir. 2015).

Mr. Springer knew that tazz was a stimulant, but not that its effects were similar to cocaine. His nephew had described the drug to him as a replacement for coffee and that is how he described it to Sabrina Schmidt and other customers. *Aplt. App.* at 8. Mr. Springer never knew the drug was under the Analogue Act or the CSA. Mr. Springer

bought the materials over the counter and often sold them two blocks from a police station. *Id.* 6.

**a. Tazz had only been described to Mr. Springer as a stimulant that substituted for coffee.**

In denying Mr. Springer’s motion, the court uses *United States v. Hassan*, 578 F.3d 108, 125-26 (2d Cir. 2008) in support of the conviction being upheld by the evidence when viewed collectively. The standard in *Hassan* can be applied to Mr. Springer. But the facts are in opposition. The perpetrator in *Hassan* took numerous measures to conceal his activity. *Id.* Mr. Springer did not take any precautionary measures in his distribution.

The government prevailed in noting that Mr. Springer knew the substantive material he was using was a stimulant. But in *Hassan*, “general knowledge of the fact that khat contains ingredients that are stimulants is not sufficient...” *Id.* at 125. Mr. Springer knowing the substance he was selling was a stimulant will not suffice. *Hassan* also notes the average American coffee drinker that knows coffee is a stimulant is not concerned they will be prosecuted for possession of a controlled substance every morning. *Id.*

**b. Alex learning of tazz from his nephew does not mean he kept track of Supreme Court decisions on analogue drugs.**

The lower court argues since Mr. Springer knew of the street name tazz that he would be aware of Supreme Court decisions about the drug. *Aplt. App.* at 17. This argument as the court notes does “strike the heart of the line-drawing.” *Id.* at 16. There is no evidence presented that shows Mr. Springer knew tazz was controlled other than him selling the stimulant. And the court acknowledges “Mr. Springer’s action [were] inconsistent with the typical actions of a distributor aware of the illegality of his actions.” *Id.* at 17. The



Governments facts, attached to Mr. Springers testimony that he never knew his distribution was illegal, when viewed collectively do not meet the standard the lower court uses to convict Mr. Springer. Last the lower court concedes that Mr. Springer cannot be found guilty under the second method of proving knowledge under 21 U.S.C. § 813.

### **Conclusion**

Mr. Springer's Fourth Amendment rights were violated when his shoes box was illegally searched by officers who obtained consent from his mother to search the apartment but failed to inquire further when the ambiguity of a shoebox came into question. Because the officers failed to inquire further, the search was fruit of the poisonous tree. But even if the officers could prove the search was legal, Mr. Springer had no knowledge that his distribution of tazz was illegal in light of recent Supreme Court rulings. For these reasons, Mr. Springers conviction should overturn after a de novo review from the Fourteenth Circuit Court of Appeals.

### **Statement Regarding Oral Argument**

This is a matter of first impression for the Court. Oral argument should be granted on these grounds. This would help future disputes of the law regarding similar circumstances being decided with a clear standard of how the Fourteenth Circuit of Appeals would rule.

Dated: April 2, 2020

Respectfully submitted,

THE LAW FIRM

By: s/Rodney Hester

---

Rodney Hester  
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Arlington, Texas 76017  
Telephone: (817)-000-000

*Counsel for Alex Springer*

**Certificate of Service**

The undersigned certifies that on April 2, 2020, the foregoing was served via this  
Courts system on the following attorney for Alex Springer:

Rodney Hester  
The Law Firm  
2020 High Road, Suite 1  
Arlington, Texas 76017  
Telephone: (817)-000-000

*Counsel for Alex Springer*

**Applicant Details**

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Last Name	<b>Johnson</b>		
Citizenship Status	<b>U. S. Citizen</b>		
Email Address	<a href="mailto:Brandonajohnson96@gmail.com">Brandonajohnson96@gmail.com</a>		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> <b>Street</b>  <b>3476 Sweetwater Blvd. Apt. 4108</b>  <b>City</b>  <b>Addis</b>  <b>State/Territory</b>  <b>Louisiana</b>  <b>Zip</b>  <b>70710</b>  <b>Country</b>  <b>United States</b> </td> </tr> </table>	Address	<b>Street</b> <b>3476 Sweetwater Blvd. Apt. 4108</b> <b>City</b> <b>Addis</b> <b>State/Territory</b> <b>Louisiana</b> <b>Zip</b> <b>70710</b> <b>Country</b> <b>United States</b>
Address			
<b>Street</b> <b>3476 Sweetwater Blvd. Apt. 4108</b> <b>City</b> <b>Addis</b> <b>State/Territory</b> <b>Louisiana</b> <b>Zip</b> <b>70710</b> <b>Country</b> <b>United States</b>			

Contact Phone Number	<b>4697446321</b>
----------------------	-------------------

**Applicant Education**

BA/BS From	<b>Rhodes College</b>
Date of BA/BS	<b>May 2019</b>
JD/LLB From	<b>Southern University Law Center</b>
Date of JD/LLB	<b>May 20, 2023</b>
Class Rank	<b>Not yet ranked</b>
Law Review/Journal	<b>Yes</b>
Journal(s)	<b>Journal of Race Gender and Poverty</b>
Moot Court Experience	<b>No</b>

**Bar Admission****Prior Judicial Experience**

Judicial Internships/Externships	<b>No</b>
Post-graduate Judicial Law Clerk	<b>No</b>

## **Specialized Work Experience**

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Dear Judge Ramirez,

Greetings your Honor, My name is Brandon Johnson. I am a graduate of Rhodes College, a graduating 3L law student at the Southern University Law Center, and I am writing to express my sincere interest in the Term Clerk Position for your chambers in the U.S. District Court of the Northern District of Texas. I feel strongly that my skills of legal research and writing make me the best fit for this position.

Public Service has become an ever-increasing important component of my life. Over my entire life and law school career, I have dedicated my talents and my time to opportunities that serve others. In my first summer, I interned with the Office of Shelby County Public Defender in Memphis, Tennessee to learn about the problems of our criminal justice system. In the Spring of 2022, I worked as a Legal Fellow with the Louisiana Legislative Black Caucus to have a better understanding of our legislative process in the state of Louisiana. And in this experience, I learned just how much legislative representation mattered to the achievement of civil rights for all Americans. This spurred my strong interest in voting rights and I interned that next summer with the Lawyers Committee for Civil Rights Under Law, the National Democratic Redistricting Committee that fall, and the American Civil Liberties Union this spring.

All of these experiences have led me to have a strong desire to work in the public service sector as a civil rights attorney. And I sincerely believe that the opportunity to serve as your law clerk would be an amazing start to the path of public service. I am looking forward to discussing my experiences further regarding this position and my résumé is enclosed to provide you with details of my past experiences.

Best Regards

Brandon Johnson  
3L J.D. Candidate  
Southern University Law Center  
Executive Editor  
Journal of Race, Gender, and Poverty  
Founder & Treasurer  
Honors Board of Advocates  
[Brandonajohnson96@gmail.com](mailto:Brandonajohnson96@gmail.com)  
Phone Number: 469-744-6321

## Brandon A. Johnson

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3476 Sweetwater Blvd. Apt. 4218 • Addis, LA 70710 • 469-744-6321 • brandonajohnson96@gmail.com

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### EDUCATION

#### Southern University Law Center

*Juris Doctor* Candidate, May 2023

GPA: 3.1

- Founder & Treasurer Honors Board of Advocates
- Executive Editor of Journal of Race, Gender, and Poverty
- 2021 – 2022 ABA Arbitration Competition Regional Champion
- Competitor 5<sup>th</sup> Annual MLK Civil Rights Competition

#### Relevant Coursework

- Administrative Law: Conducted analysis on case law establishing key regulatory powers of administrative agencies
- Constitutional Law: Conducted analysis and increased knowledge of past and recent past Supreme Court precedent that have shaped our current government policies
- Voting Rights: Conducted research and drafted legal memoranda regarding present day voting rights cases and challenges
- Common Law Property: Developed skillset in understanding the key principles of property law
- Federal Jurisdiction & Procedure: Refined skillset of understanding of the procedure of federal courts
- Trial Advocacy: Developed and increased skills in trial advocacy that were previously built through mock trial competition
- Legal Research: Developed a skillset in legal research, specifically the navigation of common legal research engines
- Legal Writing: Developed skills in legal writing, specifically how to craft a legal writing sample
- Torts: Developed skills in the understanding of common law tort principles, including the Restatement of Torts and the use of tort law in federal legislation

#### Rhodes College

*Bachelor of Arts in Political Economy*, May 2019

- Attorney Member of Rhodes College Mock Trial Team
- Secretary of Alpha Phi Alpha Fraternity, Inc., Nu Eta Chapter
- President of Rhodes College Democrats

## RELEVANT EXPERIENCE

**American Civil Liberties Union – New York, NY** 01/2023 – Present

*Legal Extern, Voting Rights Project*

- Organizing legal research regarding redistricting policies in Louisiana
- Conducting legal research to assist with oral argument for Texas Civil Forfeiture Cases
- Leading legal research regarding voter registration process
- Drafting legal memorandum regarding voter registration procedures
- Developed proficiency in the use of PACER legal research tool

**National Democratic Redistricting Committee – Washington D.C.** 09/2022 – 11/2022

*Litigation & Policy Extern*

- Performed legal research regarding redistricting policies in Louisiana
- Prepared legal research regarding Congressional Committee Hearings
- Organized legal research on key cases for the October 2022 Supreme Court term
- Provided legal research regarding the impact to states who may be impacted by upcoming Supreme Court voting rights cases

**Lawyers Committee for Civil Rights Under Law – Washington D.C.** 06/2022 – 08/2022

*Summer Associate, Voting Rights Project*

- Conducted legal research regarding voter registration policies for Ohio, Tennessee, and Louisiana
- Gathered legal research regarding the legality of local polling place closures in Georgia
- Drafted an open records request for file in Georgia
- Prepared legal memoranda for research requests regarding filing deadlines and other prescriptive periods for the state of Georgia

**Louisiana Legislative Black Caucus – Baton Rouge, LA** 01/2022 – 06/2022

*Legal Fellow*

- Conducted legal research with the National Bar Association to determine strategies to increase voting participation
- Developed and disseminated bills of interest drafts, designed to help caucus members focus their efforts on specific bills
- Prepared and assisted with drafting language for HB 483 which provides relative to the protection of gun rights
- Generated and assisted with drafting language for a voting rights restoration amendment to HB 483 which provides relative to the protection of gun rights

## SKILLS


PACER legal research tool, Legislative Drafting, Proficient Knowledge in Voting Rights and Redistricting Policy, Proficient Knowledge of Civil Rights Policy, Google Drive Proficiency, Microsoft Edge Proficiency, Sharepoint Proficiency, Communication, Creativity, Critical Thinking, Legal Research, Legal Writing, Oral Advocacy, Delivering Results, Executive Board Leadership, Meeting Facilitation, Organizing Events, Presentations, Recruiting Volunteers, Team Player, Voter Engagement

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Academic Transcript

# Academic Transcript

U01897717 Brandon A. Johnson  
Feb 28, 2023 05:34 pm

 This is not an official transcript. Courses which are in progress may also be included on this transcript.

[Institution Credit](#) [Transcript Totals](#) [Courses in Progress](#)

## Transcript Data

### STUDENT INFORMATION

#### Curriculum Information

#### PROGRAM

Doctor of Jurisprudence

**Major and Department:** Law, Law Center

\*\*\*Transcript type:Web Transcript is NOT Official \*\*\*

### INSTITUTION CREDIT [-Top-](#)

**Term:** SULC - 2020 Fall

**Major:** Law

**Academic Standing:** Law Good Standing

Subject Course Level Title				Grade	Credit Hours	Quality Points	R
LAWS	400	3P	Torts	C+	3.000	7.500	
LAWS	402	3P	Contracts	D+	3.000	4.500	
LAWS	406	3P	Family Law	B-	3.000	8.250	
LAWS	407	3P	Basic Civil Procedure	D+	3.000	4.500	
LAWS	421	3P	Legal Writing	B	2.000	6.000	
LAWS	429	3P	Lawyering Process I	P	2.000	0.000	

### Term Totals (SULC-Professional)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	16.000	16.000	16.000	14.000	30.750	2.196
<b>Cumulative:</b>	16.000	16.000	16.000	14.000	30.750	2.196

Unofficial Transcript

**Term:** SULC- 2021 Spring

**Major:** Law

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Academic Transcript

**Academic Standing:** Law Good Standing

**Subject Course Level Title**

				<b>Grade</b>	<b>Credit Hours</b>	<b>Quality Points</b>	<b>R</b>
LAWS	401	3P	Torts II - V	A-	3.000	11.250	
LAWS	404	3P	Criminal Law - V	C	3.000	6.000	
LAWS	408	3P	Legal Research - V	A-	2.000	7.500	
LAWS	417	3P	Obligations - V	C	3.000	6.000	
LAWS	422	3P	Legal Writing II	B	2.000	6.000	
LAWS	430	3P	Lawyering Process II	P	2.000	0.000	

**Term Totals (SULC-Professional)**

	<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA Hours</b>	<b>Quality Points</b>	<b>GPA</b>
<b>Current Term:</b>	15.000	15.000	15.000	13.000	36.750	2.826
<b>Cumulative:</b>	31.000	31.000	31.000	27.000	67.500	2.500

Unofficial Transcript

**Term: SULC - 2021 Fall**

**Major:** Law

**Academic Standing:** Law Good Standing

**Subject Course Level Title**

				<b>Grade</b>	<b>Credit Hours</b>	<b>Quality Points</b>	<b>R</b>
LAWS	414	3P	Constitutional Law I	B+	3.000	10.500	
LAWS	502	3P	EVIDENCE	A	3.000	12.000	
LAWS	504	3P	Civil Procedure I	B	3.000	9.000	
LAWS	523	3P	Professional Resp	B-	2.000	5.500	
LAWS	632	3P	Common Law Property - V	A	3.000	12.000	
LAWS	645	3P	Journ. of Race & Gender - V	P	1.000	0.000	
LAWS	929	3P	Trial Advocacy Board - V	A	1.000	4.000	

**Term Totals (SULC-Professional)**

	<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA Hours</b>	<b>Quality Points</b>	<b>GPA</b>
<b>Current Term:</b>	16.000	16.000	16.000	15.000	53.000	3.533
<b>Cumulative:</b>	47.000	47.000	47.000	42.000	120.500	2.869

Unofficial Transcript

**Term: SULC - 2022 Spring**

**Major:** Law

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Academic Transcript

**Academic Standing:** Law Good Standing

**Subject Course Level Title**

				<b>Grade</b>	<b>Credit Hours</b>	<b>Quality Points</b>	<b>R</b>
LAWS	413	3P	Constitution Law II	B+	3.000	10.500	
LAWS	418	3P	Criminal Procedure	C	3.000	6.000	
LAWS	505	3P	Civil Procedure II-V	B+	2.000	7.000	
LAWS	506	3P	Administrative Law-V	A	3.000	12.000	
LAWS	914	3P	Local Gov't Law-V	A	3.000	12.000	

**Term Totals (SULC-Professional)**

	<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA Hours</b>	<b>Quality Points</b>	<b>GPA</b>
<b>Current Term:</b>	14.000	14.000	14.000	14.000	47.500	3.392
<b>Cumulative:</b>	61.000	61.000	61.000	56.000	168.000	3.000

Unofficial Transcript

**Term: SULC - 2022 Summer**

**Major:** Law

**Academic Standing:** Law Good Standing

**Subject Course Level Title**

				<b>Grade</b>	<b>Credit Hours</b>	<b>Quality Points</b>	<b>R</b>
LAWS	415	3P	Civil Law Property	B	3.000	9.000	
LAWS	900	3P	Voting Rights-V	A	3.000	12.000	

**Term Totals (SULC-Professional)**

	<b>Attempt Hours</b>	<b>Passed Hours</b>	<b>Earned Hours</b>	<b>GPA Hours</b>	<b>Quality Points</b>	<b>GPA</b>
<b>Current Term:</b>	6.000	6.000	6.000	6.000	21.000	3.500
<b>Cumulative:</b>	67.000	67.000	67.000	62.000	189.000	3.048

Unofficial Transcript

**Term: SULC - 2022 Fall**

**Major:** Law

**Academic Standing:** Law Good Standing

**Last Academic Standing:** Law Good Standing

**Subject Course Level Title**

				<b>Grade</b>	<b>Credit Hours</b>	<b>Quality Points</b>	<b>R</b>
LAWS	630	3P	Wills & Trusts	C-	3.000	5.250	
LAWS	645	3P	Journ. of Race & Gender-V	P	1.000	0.000	
LAWS	651	3P	UCC-9	B+	3.000	10.500	

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				Academic Transcript		
LAWS	661	3P	UCC-2	B+	3.000	10.500
LAWS	822	3P	UBE Bar Exam Prep I-V	A	3.000	12.000
LAWS	824	3P	Honors Board of Advocates Sem.	P	1.000	0.000
LAWS	943	3P	Externship	A	3.000	12.000

Term Totals (SULC-Professional)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	17.000	17.000	17.000	15.000	50.250	3.350
Cumulative:	84.000	84.000	84.000	77.000	239.250	3.107

Unofficial Transcript

TRANSCRIPT TOTALS (SULC-PROFESSIONAL) -Top-

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	84.000	84.000	84.000	77.000	239.250	3.107
Total Transfer:	0.000	0.000	0.000	0.000	0.000	0.000
Overall:	84.000	84.000	84.000	77.000	239.250	3.107

Unofficial Transcript

COURSES IN PROGRESS -Top-

Term: SULC - 2023 Spring

Major: Law

Subject	Course	Level	Title	Credit Hours
LAWS	512	3P	Business Entities	4.000
LAWS	521A	3P	Trial Advocacy	3.000
LAWS	601	3P	Federal Jurisdiction	4.000
LAWS	611A	3P	Conflict of Laws	2.000
LAWS	698	3P	Extended Bar Prep ONL ILAW	3.000
LAWS	824	3P	Honors Board of Advocates Sem.	1.000

Unofficial Transcript

RELEASE: 8.7.1  
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**MEMORANDUM**

To: [Lawyer's Committee Attorney]  
From: Brandon Johnson  
Date: July 18, 2022  
RE: FOIA and Right to Know Requests in Georgia

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This memo provides the statute of limitations and prescriptive periods against a party who fails to respond to a state FOIA or Right-to-Know request in Georgia.

**I. Georgia. O.C.G.A. § 50-14-1 Open and Public Meetings; Time Limit: 90 Days**

There are multiple statute of limitations under the Georgia Civil Code that could apply to a private party seeking to compel record disclosure under the Georgia Open Records Act. The shortest limitation deadline is **90 days** stemming from the Open and Public Meetings Statute. This section, section **(b) (1) and (2)** reads:

(1) Except as otherwise provided by law, all meetings shall be open to the public. All votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.

(2) Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within 90 days of the date such contested action was taken or, if the meeting was held in a manner not permitted by law, within 90 days from the date the party alleging the violation knew or should have known about the alleged violation so long as such date is not more than six months after the date the contested action was taken. ((Ga. Code Ann. § 50-14-1 (2021))).

Under this provision, all meetings shall be open to the public (Ga. Code Ann. § 50-14-1 (2021)). Furthermore, the statute states that “any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision shall be commenced within **90 days** of the date such contested action was taken” (Ga. Code Ann. § 50-14-1 (2021)). While this statute does present a speedy commencement of action to enforce a violation of this provision, a key weakness for the use of this provision for the benefit of our client. That weakness is whether or not the information the opposing party is demanding that our clients turn over falls within the definition of an “agency” and a “meeting” within this statute.

The most relevant definition of an “agency” within this statute is defined as “any nonprofit organization to which there is a direct allocation of tax funds made by the governing body of any agency as defined in this paragraph which constitutes more than 33 ⅓ percent of the funds from all sources of such organization” (Ga. Code Ann. § 50-14-1 (2021)). Thus, if our clients fall within this category of funding for nonprofits then they may be considered an agency and therefore fall within this provision.

The term “meeting” in this statute is defined as either “the gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed, or voted upon” or “the gathering of a quorum of any committee of the members of the governing body of an agency or a quorum of any committee created by the governing body at which any official business, policy, or public matter of the committee is formulated, presented, discussed, or voted upon” (Ga. Code Ann. § 50-14-1 (2021)). Therefore if any of the information that is sought can fit within the definition of a “meeting” then it can thus be subject to the limitation provisions of this article.

However, the fact that the information being sought by the opposing party must fit within the definition of **two** terms in this article, lends weakness to the argument for using this statute to enforce compliance with the Open Records Act.

## II. O.C.G.A. § 9-3-28 Actions by Informers Specific Limitations; Time Limit: 1 year

Another limitation deadline is **one year** stemming from the Limitations Actions Statute. This statute appears to tailor the facts closely for the case at hand with our clients. Here the statute states that “all actions by informers to recover any fine, forfeiture, or penalty shall be commenced within **one year** from the time the defendant’s liability thereto is discovered or by reasonable diligence could have been discovered” (Ga. Code Ann. § 9-3-28 (2021)). In the case of *Greene v. Lam Amusement Co.*, the U.S. District Court for the Northern District of Georgia, ruled that the meaning of the term “informers” means

“All persons empowered to sue for penalties” (Greene v. Lam Amusement Co., 145 F. Supp. 346, 1956 U.S. Dist. LEXIS 2602 (D. Ga. 1956)).

The opposing party could make an argument to the court that because they have a private right of action under the Open Records Act, that they are thus able to recover any fines, forfeiture or penalties that result from a failure to respond to an open records request. And if they are able to recover fines, forfeiture, or penalties for failure to respond to an open records request, then the party that can recover can be viewed as an informer under the statute. This timeline, if argued by the opposing party, could be a reasonable timeline for our clients to anticipate potential litigation.

### III. O.C.G.A. § 9-3-33 Injuries to the Person; Time Limit: 2 years

Another limitation deadline is **two years** stemming from the Limitations Actions Statute. This statute states that “except as otherwise provided in this article, actions for injuries to the person shall be brought within two years after the right of action accrues, except for injuries to the reputation” (Ga. Code Ann. § 9-3-33 (2021)).

The key argument that the opposing party would have to prove, is that a failure of our client to respond to the open records request constitutes an “injury to the person”. The opposing party can prove in a general fashion that the failure of our client to respond to the open records request constitutes an injury to their person because the lack of response violates their statutory right to request and receive public records.

However, this argument could run into some murky legal waters. The legislative comments indicate that the legislature intends for this statute “to protect a child from further victimization after he or she is discovered to be a sexually exploited child by ensuring that a child protective response is in place in this state” (Ga. Code Ann. § 9-3-33 (2021)). If the court sides with this interpretation, then the general injury argument would falter.

The courts in the past however, did give some room to the general personal injury theory argument, ruling in *Daniel v. American Optical Corp.*, that the “scope of application of O.C.G.A. § 9-3-33 is determined by nature of injury sustained rather than the legal theory underlying the claim for relief” (Daniel v. American Optical Corp., 251 Ga. 166, 304 S.E.2d 383, 1983 Ga. LEXIS 759 (1983)). This opinion allowed the courts to rule that this specific statute of limitation is controlling in *Adair v. Baker Bros*, a case regarding breach of implied warranty. In their opinion, the court notes regarding the 2 year statute of limitations that:

Georgia follows the general rule. In *Daniel v. American Optical Corp.*, 251 Ga. 166, 304 S.E.2d 383, our Supreme Court answered a certified question from the 11th Circuit Court of Appeals as to which period of limitations applied to an action in which a plaintiff had been injured when a piece of hot metal flew over his safety glasses into his eye while he was operating a lathe. The action was based on personal injuries (OCGA § 9–3–33) and strict liability (OCGA § 51–1–11). The action was filed more than two years after the incident occurred and would be barred under OCGA § 9–3–33, but under the theory of strict liability, would have a ten-year period. OCGA § 51–1–11(b)(2). The court, referring to the wording of OCGA § 9–3–33: “ ‘Actions for injuries to the person shall be brought within two years after the right of action accrues ...’ ” held that “[t]his is a traditional general statute of limitations. By its very language, the scope of application of this statute of limitations is determined by the nature of the injury sustained rather than the legal theory underlying the claim for relief.... (*Adair v. Baker Bros., Inc.*, 366 S.E.2d 164, 165 (Ga. App. 1988)).

Thus the effectiveness of this statute with regards to our client’s case depends mostly on whether a failure to respond to an open records request constitutes a sufficient example of injury to the person to the court.

#### IV. O.C.G.A. § 9-3-22 Enforcement of rights under statutes; Time Limit: 20 years

Perhaps the longest limitation deadline occurs under this statute and it is a deadline of **20 years**. This timeline stems from the Limitations Actions Statute.

This provision states that “all actions for the enforcement of rights accruing to individuals under statutes or acts of incorporation or by operation of law shall be brought within 20 years after the right of action has accrued” (Ga. Code Ann. § 9-3-33 (2021)). This statute is clearly the most beneficial option for our opponents, and the least beneficial motion for our clients.

The first reason it is beneficial for our opponents and least beneficial for our clients is that the limitation timeline is **20 years**. This essentially means that our clients may have to anticipate litigation for their failure to respond to the open records request from our opponent for the next **20 years**. This timeline allows the opposing party to threaten suit and hang this lawsuit over our clients head, likely in a retaliatory manner for the next two decades, which could prevent our clients from doing the important work of protecting voting rights in the state of Georgia.

Secondly, this argument is the easiest to make. The language “all actions for the enforcement rights accruing to individuals under statutes” is extremely broad. It covers

**all** statutes that have enforcement rights and private rights of actions to individuals. The Georgia Open Records act does have a private right of action and that private companies have a right of action against other private actions (*Central Atlanta Progress, Inc. v. Baker*). Thus the opposing party could fit squarely into the parameters of this statute for the purposes of actions against our clients for failure to comply. The best hope for our clients if this statute is invoked, is to enter a cross claim to prevent this action from going forward, See below, e.g. § 51-7-80, § 51-7-81, and § 51-7-84, on abusive litigation.

**V. O.C.G.A. § 51-7-80, § 51-7-81, § 51-7-84 Abusive Litigation; Time Limit: 1 year**

Finally, this limitation deadline is **one year** stemming from the Torts of Abusive Litigation Statute. The unique aspect of this statute is that it can be used by our clients as a cross claim in response to the open records request from the opposing party given the circumstances of the case.

This litigation starts by highlighting that “any person who takes an active part in the initiation, continuation, or procurement of civil proceedings against another shall be liable for abusive litigation if such person acts: (1) with malice; and (2) without substantial justification” (Ga. Code Ann. § 50-7-81 (2021)). The first key term “malice” is defined as meaning “acting with ill will or for a wrongful purpose and may be inferred in an action if the party initiated, continued, or procured civil proceedings or process in a harassing manner or used process for a purpose other than that of securing the proper adjudication of the claim upon which the proceedings are based” (Ga. Code Ann. § 50-7-80 (2021)). The second key term “without substantial justification” is defined as “when used with reference to any civil proceeding, claim, defense, motion, appeal, or other position, means that such civil proceeding, claim, defense, motion, appeal, or other position [is] (A) frivolous; (B) groundless in fact or in law; or (C) vexatious” (Ga. Code Ann. § 50-7-80 (2021)).

By cross claiming or claiming after the fact under this statute, our client will be arguing to the court that the open records request and any proceeding initiated by the opposing party is made out of “malice” and “without justification”. Using abusive litigation as a cross claim is allowed, as stated in the case of *Valade v. Meriwether & Tharp LLC*. Here the court stated:



Under Georgia's abusive litigation statutory scheme, “[a]ny person who takes an active part in the initiation, continuation, or procurement of civil proceedings against another shall be liable for abusive litigation if such person acts: (1) [w]ith malice; and (2) [w]ithout substantial justification.”

A “[c]ivil proceeding” is defined as “any action, suit, proceeding, counterclaim, **cross-claim**, third-party claim, or other claim at law or in equity.”<sup>5</sup> A “[c]laim” is defined as “any allegation or contention of fact or law asserted in support of or in opposition to any civil proceeding, defense, motion, or appeal.” (Valade v. Meriwether & Tharp, LLC, A22A0330, 2022 WL 2301417, (Ga. App. June 27, 2022))

Furthermore, the court notes that the procedure for this claim includes “as a condition precedent to asserting a claim for abusive litigation, a plaintiff must send written notice to the potential defendant giving the defendant “an opportunity to voluntarily withdraw, abandon, discontinue, or dismiss the civil proceeding, claim, defense, motion, appeal, civil process, or other position”” (Valade v. Meriwether & Tharp, LLC, A22A0330, 2022 WL 2301417, at \*2 (Ga. App. June 27, 2022)). This notice must be given and filed at the same time the cross claim is filed. Thus, this appears to be an argument that our clients are ready to make in response to the request and any proceedings that occur therein, and an argument that could be strong for our clients depending on the evidence available.

## Applicant Details

First Name	Rachael
Middle Initial	M
Last Name	Kroeger
Citizenship Status	U. S. Citizen
Email Address	<a href="mailto:rachkro@mail.regent.edu">rachkro@mail.regent.edu</a>
Address	<div> <div>Address</div> <div> <div>Street</div> <div>260 Suburban Parkway, 1</div> <div>City</div> <div>Norfolk</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>23505</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	6026961589

## Applicant Education

BA/BS From	Abilene Christian University
Date of BA/BS	May 2017
JD/LLB From	Regent University School of Law
	<a href="http://www.regent.edu/acad/schlaw/">http://www.regent.edu/acad/schlaw/</a>
Date of JD/LLB	May 6, 2023
Class Rank	30%
Law Review/Journal	Yes
Journal(s)	Journal of Global Justice and Public Policy
Moot Court Experience	Yes
Moot Court Name(s)	Regent Law 1L Moot Court Competition

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	<b>Yes</b>
Post-graduate Judicial Law Clerk	<b>No</b>

### **Specialized Work Experience**

#### **Recommenders**

Duane, James  
jamedua@regent.edu  
757-352-4336

Whittico, Gloria  
gwhittico@regent.edu  
757.352.4852

Walton, S. Ernie  
stevwal@regent.edu  
757.352.4315

Lannetti, David  
dlannetti@vacourts.gov  
757-664-4593

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**RACHAEL KROEGER**  
260 Suburban Parkway 1, Norfolk, VA 23505  
(602) 696-1589 • rachkro@mail.regent.edu

---

February 8, 2023

The Honorable Irma C. Ramirez, United States District Court for the Northern District of Texas  
1100 Commerce Street, Room 1567  
Dallas, Texas 75242  
United States

To the Honorable Irma C. Ramirez,

I am a third-year Honors student at Regent University School of Law writing to apply for the law clerk position with the United States District Court for the Northern District of Texas. My introduction to this opportunity through OSCAR illustrated the impressive opportunities that this position would offer to conduct legal research, utilize legal writing and oral skills, and observe court proceedings. These avenues for growth and experience, along with an opportunity to serve in the Dallas community, sparked my interest in the position.

On a personal note, I am a driven student with a history of academic success and community involvement. I am currently working as a legal intern for the Honorable David Lannetti, Chief Judge of the Norfolk Circuit Court in Norfolk, Virginia. Under his instruction, I primarily devote my time to drafting legal memoranda in preparation for cases that Judge Lannetti presides over. In doing this, I have grown exponentially in my abilities to synthesize the case problems set before me, conduct legal research, and confidently apply what I have found into analyses that I then present to the Judge as a recommendation. This past Summer of 2022, I was honored with the chance to intern for Collin County's District Attorney's Office in McKinney, Texas within the Family Justice Division. The attorneys within the division delegated tasks such as legal research for adoption cases, Child Protective Services cases, and Juvenile cases. Further, I prepared questions to ask witnesses in hearings and, most excitingly, represented the State with an overseeing attorney in juvenile detention hearings. Finally, in the Summer of 2021, I had the unique opportunity to intern for Justice Mike Chibita of the Supreme Court of Uganda. Justice Chibita entrusted me with the task of creating a comprehensive curriculum to be implemented and used by the judicial officers in Uganda, which required researching judiciary training institutes throughout several common law countries and interviewing institute leaders internationally to gather information on their operations.

I am currently Managing Editor and Business Editor on Regent's Journal for Global Justice and Public Policy, in which I have assisted in the editing of three articles to be published this year, co-coordinated the Journal's "Slavery to Bravery: Human Trafficking" Symposium, and am currently managing the finances and budget for the organization. Additionally, I serve as a Senior Associate of Regent's Trial Advocacy Board through which I have assisted in organizing trial advocacy competitions as well as coached teams for those competitions. Finally, I serve as Vice President for the Council of Graduate Students, which entails being an advocate for graduate students' concerns and requests, coordinating graduate school-wide events, and overseeing the work done by COGS Senators and Representatives. This variety of experiences and responsibilities has taught me how to be a reliable, diligent worker, how to communicate effectively, and has exposed me to several avenues

of advocacy both in Regent University and out in the working world. My interest in advancing people's rights, combined with my legal writing and leadership abilities, make me an ideal candidate for this position.

This clerkship presents an excellent opportunity to further develop technical legal skills and to enhance my professional experience while getting a chance to serve in a community that I aim to establish myself in. A chance to clerk for you at the United States District Court for the Northern District of Texas would be both an honor and an invaluable opportunity.

Thank you for your consideration of my application. I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script that reads "Rachael Kroeger". The signature is written in black ink and is positioned above a horizontal line.

Rachael Kroeger

## RACHAEL KROEGER

260 Suburban Parkway 1, Norfolk, VA 23505  
(602) 696-1589  
rachkro@mail.regent.edu

### EDUCATION

#### Regent University School of Law, Virginia Beach, VA

May 2023

*Candidate for Juris Doctor*

GPA: 3.46

- Dean's Scholarship Recipient
- Honors Program
- American Bar Association Member
- Virginia Beach Bar Association Member
- Thomson Reuters Essential Legal Research Certified
- Lexis Nexis Proficiency Certified

#### Research

- Student Note for the Journal of Global Justice and Public Policy: "A Return to Rehabilitative Justice in Juvenile Criminal Cases: A Call for Legal Reform Through a Proposed Statute Confronting the Psychological and Developmental Gaps that Should Bar Children from Being Sentenced as Juveniles Without Opportunity for Parole."

#### Abilene Christian University, Abilene, TX

May 2017

*B.A. in Business Administration and Management*

*Minor in Sociology*

*Summa Cum Laude Graduate*

GPA: 3.93

#### Honors:

- Dean's List Honoree (2013-2017)
- Alpha Chi: National Honors Society Member
- Alpha Kappa Delta: International Sociology Honors Society Member
- Phi Eta Sigma: Freshman Honors Society Member
- W-Club: Women's Honors Society Member
- Presidential Scholarship Recipient
- University Scholar
- Honors Scholar

#### Justice and Urban Studies Team:

August 2013 – May 2016

- Community-building program through ACU Honors College which focused on understanding and combatting systemic poverty in Southeast Dallas.
- Partnered with CitySquare to combat the effects and causes of urban poverty, specifically focusing on housing, health, and food needs.
- Sandbranch – with North Texas Food Bank and Skillman: Church of Christ
  - Partnered with NTFB to research, evaluate, and assist the unincorporated community of Sandbranch.
  - Fundraised through Skillman: Church of Christ for a community farming project.
  - Presented to and partnered with Skillman's financial board to assist in creating sustainable solutions for Sandbranch.
- "Justice Along the Meridian" Study Abroad Program
  - Studied world religions in England, Spain, and Ghana and gained a global perspective on poverty along the Meridian.
  - Interviewed leaders of different world religions and studied the social and socioeconomic influence that Humanism, Catholicism, and Islam have in their respective communities and in society at large.

Activities:

- ACU Honors Senate Service Committee Chairman **September 2015 – May 2017**
  - Created several service events and opportunities for Honors students on and off campus.
  - Served with Meals on Wheels.
  - Served with REACH – Abilene Apartment Ministries.
- Student Committee for Gender Equality **September 2015 – May 2017**
  - Served as the Recruitment and Advertising Officer.
  - Assisted in coordinating events and marketing.

Research:

- Honors Scholar Thesis: “A Home Away from Home: A Business Plan for the Relocation of Refugees in Abilene”
- Undergraduate Research Festival Project: “The Effects of Mentors in an Adolescent’s Life: An Evaluation of the Availability of Mentorship in Dallas ISD”
- Research for CORE 210.H2 implemented in Sandbranch project work: “Food Banks and Food Providers: A Study of Nutritional Quality in Food Banks and the Sources of Food”

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**LEGAL EXPERIENCE**

**Hon. Chief Judge David Lannetti, Norfolk Circuit Court, Norfolk, VA** **August 2022 – Present**  
*Judicial Intern*

- Conduct legal research, draft legal memoranda, and create pre-sentencing reports in civil and criminal cases.
- Participate in in-chambers discussions with Chief Judge Lannetti regarding cases brought before the court.

**Chaing Anders, PLLC, Chesapeake, VA** **August 2022 – Present**  
*Legal Intern*

- Conduct legal research and draft legal memoranda in civil cases.
- Assist in case management and organization for divorce and custody cases.
- Observe client meetings and take meeting notes for the overseeing attorney.

**Collin County District Attorney’s Office: Family Justice Division, McKinney, TX** **July 2022 – August 2022**  
*Legal Intern*

- Represented the State (with an overseeing attorney) in juvenile detention hearings.
- Assisted in case management and organization for CPS cases in the CPS sector of the Family Justice Division.
- Prepared cross-examination questions for 14-day hearings, created one-pagers for individual cases, and appropriately filed each case within the CPS sector of the Family Justice Division.
- Observed multiple court proceedings, including bond hearings, 14-day hearings, voir dices, Crimes Against Children (CAC) trials, Driving While Intoxicated (DWI) trials, juvenile detention hearings, and pre-trial hearings.
- Toured the Children’s Advocacy Center of Collin County and Collin County’s Juvenile Detention Facility.
- Drafted pleadings via intake forms for juvenile cases in the Juvenile Law sector of the Family Justice Division.

**Grace Norfolk Clinic, Norfolk, VA** **May 2022 – June 2022**  
*Legal Intern*

- Conducted research on landlord/tenant law, including but not limited to Section 8 Program Administrative Plans, mental health and housing laws, and the tenant eviction process.
- Created a reference guide for all potential defenses and its supporting Virginia Code to be raised in the process of tenant evictions.
- Attended employee trainings weekly, which included participating in CLE courses and discussions.
- Observed mediations and assisted the mediator when appropriate at the City of Norfolk Courthouse.

**Supreme Court of Uganda, Kampala, Uganda** **June 2021 – August 2021**  
*Legal Intern*

- Conducted research on different judiciary training institutes throughout common law and commonwealth countries.
- Compared and contrasted the research to the Judicial Training Institute of Uganda.
- Created a comprehensive curriculum to be implemented and used by the judicial officers in Uganda.
- Interviewed training institute leaders internationally to gather information on their operations.

**Council of Graduate Students, Virginia Beach, VA**

**December 2021 – Present**

*Vice President*

- Select and form the law school-specific COGS team and maintain a strong team environment among the members.
- Solicit input from the constituents I represent, voicing student-related issues and concerns to the Council of Graduate Students and the COGS Executive Board.
- Plan university-wide, COGS-sponsored events, meetings, and initiatives.
- Facilitate meetings with the law school Dean to address student-related issues and concerns.

**Journal for Global Justice and Public Policy, Virginia Beach, VA**

**June 2021 – Present**

*Managing Editor and Business Editor*

- Edit footnotes for international articles to be published in the Journal.
- Write a student note that focuses on international law or a human rights issue.
- Manage inventory, budget, and taking meeting notes for the Journal.
- Assist in any Journal-sponsored Regent School of Law events.

**Regent Trial Advocacy Board, Virginia Beach, VA**

**June 2021 – Present**

*Senior Associate and Social Media Manager*

- Participate in training sessions for preparation for interscholastic competitions.
- Assist in organizing and coordinating the 1L Regent Trial Competition as requested by the Executive Board.
- Assist in any Board-sponsored Regent School of Law events.

**Public Interest Legal Advocates of Regent, Virginia Beach, VA**

**August 2021 – May 2022**

*2L Class Representative*

- Assisted in coordinating and executing local outreach programs.
- Made timely announcements for various events or opportunities offered through PILAR.
- Assisted in any PILAR-sponsored Regent School of Law events.

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**PROFESSIONAL EXPERIENCE**

**Grace Point Church, San Antonio, TX**

**September 2018 – April 2020**

*Teacher*

- Established positive relationships with students, parents, fellow teachers, and school administrators.
- Collaborated with other staff members to plan and schedule lessons promoting learning and student engagement.
- Created lesson plans in accordance with Abeka curriculum and school-wide curriculum standards.
- Conquered challenges of working with highly diverse student population to attain exceptional student achievement.
- Taught students in various stage of cognitive, linguistic, social, and emotional development.
- Used children's literature to teach and reinforce reading, writing, grammar, and phonics.

**Joshua Management Company, San Antonio, TX**

**November 2017 – September 2018**

*Field Manager*

- Maintained four separate storage unit facilities.
- Provided customer service through rental services.
- Marketed facilities throughout several businesses within San Antonio.
- Assisted in lien processing and auctions.

**Jeffrey Eckols Law Offices, San Antonio, TX**

**August 2017 – September 2018**

*Paralegal*

- Summarized depositions for varying lawsuits.
- Assisted in the execution of nonprofit outreach programs through the company.
- Handled filing of paperwork and organization of law documents.
- Exceeded specific team goals and resolved time-sensitive issues by partnering with staff to share and implement project initiatives.
- Identified and analyzed legal documents, discovery documents, and contracts.



**Business As Mission: Training, Chiang Mai, Thailand**

**May 2016 – September 2016**

*Student Intern*

- Assisted in planning and executing the BAM annual international conference for 300+ attendees.
- Generated spreadsheets recording different university outreach opportunities and contacts.
- Created a promo video for university and intern recruitment.
- Administered physical and digital filing systems, keeping records well-organized and easily retrievable by team members.
- Produced profession letters, presentations, and spreadsheets.
- Networked throughout several Christian organizations and businesses internationally.

**Skillman Church of Christ, Dallas, TX**

**June 2015 – August 2015**

*Office Assistant*

- Participated in and observed curriculum for a recovery program at Grace Place Properties for addicts and ex-convicts.
- Assisted with office work as needed.
- Assisted in planning and executing the annual Vacation Bible School program for 100+ attendees.

**Rainbow Days, Inc., Dallas, TX**

**July 2015 – August 2015**

*Camp Counselor*

- Counseled and led various ages at three separate camp locations.
- Assisted in coaching swim lessons.

**AmeriCorps: Jubilee Park Community Center, Dallas, TX**

**June 2014 – August 2014**

*Teacher*

- Taught math, science, reading, and art to forty 3<sup>rd</sup>-5<sup>th</sup> graders.
- Created curriculum for science and art programs.
- Served as a guide on field trip outings.
- Collaborated with other staff members to plan and schedule lessons promoting learning and student engagement.
- Conquered challenges of working with highly diverse student population to attain exceptional student achievement.
- Taught students in various stage of cognitive, linguistic, social, and emotional development.

**Aramark, Abilene, TX**

**August 2013 – May 2017**

*Paraprofessional Marketing Specialist and World Famous Bean Team Member*

- Evaluated sales reports for multiple on-campus food providers.
- Created graphs, charts, and reports for supervisors using MS Excel.
- Designed posters, templates, and other graphics for display.
- Assisted in event planning and implementation.
- Handled money at sporting events and at register.
- Assisted in food preparation and service.

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**VOLUNTEER EXPERIENCE**

**Trinity Church – Town Center, Virginia Beach, VA**

**October 2020 - Present**

*Team Leader for Trinity Kids K-5<sup>th</sup> Grade*

- Implement and present Sunday School lesson plans.
- Execute large group game activities.
- Facilitate small group activities and group conversations.

**Southern Sudan Mission, Gambella, Ethiopia**

**July 2019**

*Service Volunteer and Vacation Bible School Teacher*

- With the assistance of a translator, taught VBS curriculum to three separate classes with roughly fifty refugee children per class.
- Assisted in providing basic wound care to a Nuer refugee village.

**Alamo Community Church, San Antonio, TX**

**December 2018 – March 2020**

*Small Group Leader and Preschool Team Lead*

- Oversaw check-in and check-out of all Preschool students.
- Led the large group game activities.
- Facilitated group conversations and Bible lessons.

**M.A.D. House Domain, San Antonio, TX**

**August 2017 – August 2020**

*Program and Event Coordinator*

- Co-founded and coordinated the city-wide event We Feel Pretty.
- Co-coordinator of the city-wide event Creative Art Night.
- Managed finances at multiple events.
- Managed vendors at multiple events.
- Assisted in designing posters, templates, and other graphics for display.
- Reoccurring speaker at Remnant ministry gatherings.
- Served with the children's ministry at Remnant ministry gatherings.
- Recipient of Inspiration 4 Life's "Local Hero – Heart of Gold" 2018 Award for the We Feel Pretty event.

**Other Volunteer Experience:**

- Live United, 2010-2013
- Welcome to America Project, 2010-2013
- American Red Cross, 2010-2013
- National Honors Society, 2011-2013
- Meals on Wheels, 2013-2014
- AMCA Moot Court Regional Competition, 2021

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Academic Transcript



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## Display Transcript

B07367861 Rachael M. Kroeger  
Feb 08, 2023 12:51 am



This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

[Institution Credit](#) [Transcript Totals](#) [Courses in Progress](#)

### Transcript Data

#### STUDENT INFORMATION

##### Curriculum Information

##### Current Program

Juris Doctor

**Program:** J.D. - Juris Doctor

**Campus:** Virginia Beach Campus

**Major and Department:** Law, LAW|JD Law

\*\*\*Transcript type:WEB is NOT Official \*\*\*

#### DEGREES AWARDED

**Sought:** Juris Doctor **Degree Date:**

##### Curriculum Information

##### Primary Degree

**Program:** J.D. - Juris Doctor

**Major:** Law

#### INSTITUTION CREDIT [-Top-](#)

**Term: Fall 2020**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	511	LA	Foundations of Law	B-	2.000	5.34		
LAW	521	LA	Contracts I	B+	3.000	9.99		
LAW	541	LA	Torts I	B	2.000	6.00		
LAW	551	LA	Civil Procedure I	B	2.000	6.00		
LAW	552	LA	Legal Analysis, Rsrch&Wrtng I	A	3.000	12.00		
LAW	561	LA	Property I	B+	3.000	9.99		

#### Term Totals (First Professional Law)

Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
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<b>Current Term:</b>	15.000	15.000	15.000	15.000	49.32	3.28
<b>Cumulative:</b>	15.000	15.000	15.000	15.000	49.32	3.28

Unofficial Transcript

**Term: Spring 2021**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	512	LA	Foundations of Practice	P	1.000	0.00		
LAW	522	LA	Contracts II	B	2.000	6.00		
LAW	542	LA	Torts II	B+	3.000	9.99		
LAW	553	LA	Legal Analysis, Rsrch&Wrtng II	A-	3.000	11.01		
LAW	554	LA	Civil Procedure II	B	3.000	9.00		
LAW	562	LA	Property II	A-	3.000	11.01		

**Term Totals (First Professional Law)**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	15.000	15.000	15.000	14.000	47.01	3.35
<b>Cumulative:</b>	30.000	30.000	30.000	29.000	96.33	3.32

Unofficial Transcript

**Term: Summer 2021**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	795	LA	Externship: Judicial/Govt	P	3.000	0.00		I

**Term Totals (First Professional Law)**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	3.000	3.000	3.000	0.000	0.00	0.00
<b>Cumulative:</b>	33.000	33.000	33.000	29.000	96.33	3.32

Unofficial Transcript

**Term: Fall 2021**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	621	LA	Sales	A-	2.000	7.34		
LAW	652	LA	Evidence	B	4.000	12.00		
LAW	662	LA	Wills, Trusts, & Estates	B+	3.000	9.99		
LAW	683	LA	Con Law I/ConstitutionalStruct	A-	3.000	11.01		
LAW	748	LA	Academic Legal Scholarship	A	2.000	8.00		

**Term Totals (First Professional Law)**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	14.000	14.000	14.000	14.000	48.34	3.45
<b>Cumulative:</b>	47.000	47.000	47.000	43.000	144.67	3.36

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**Term: Spring 2022**

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Academic Transcript

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	531	LA	Criminal Law	A	3.000	12.00		
LAW	575	LA	SpTp:Con Frmwk of Relig Librty	P	1.000	0.00		
LAW	684	LA	ConstitutionalLawII/Ind.Rights	A-	3.000	11.01		
LAW	691	LA	Professional Responsibility	B	3.000	9.00		
LAW	732	LA	Juvenile Law	A+	3.000	12.99		
LAW	780P1	LA	Professional SkillsPracticum I	P	2.000	0.00		

**Term Totals (First Professional Law)**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	15.000	15.000	15.000	12.000	45.00	3.75
<b>Cumulative:</b>	62.000	62.000	62.000	55.000	189.67	3.44

Unofficial Transcript

**Term: Summer 2022**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	755	LA	Advanced Legal Resrch&Wrtng	A-	3.000	11.01		
LAW	795	LA	Externship: Judicial/Govt	P	2.000	0.00		I

**Term Totals (First Professional Law)**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	5.000	5.000	5.000	3.000	11.01	3.67
<b>Cumulative:</b>	67.000	67.000	67.000	58.000	200.68	3.46

Unofficial Transcript

**Term: Fall 2022**

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R
LAW	602	LA	BusinessStructures&Agency	A-	3.000	11.01		
LAW	654	LA	Trial Practice	A-	3.000	11.01		
LAW	655	LA	Negotiations	B	3.000	9.00		
LAW	747	LA	Race and the Law	A-	3.000	11.01		

**Term Totals (First Professional Law)**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Current Term:</b>	12.000	12.000	12.000	12.000	42.03	3.50
<b>Cumulative:</b>	79.000	79.000	79.000	70.000	242.71	3.46

Unofficial Transcript

**TRANSCRIPT TOTALS (FIRST PROFESSIONAL LAW) -Top-**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
<b>Total Institution:</b>	79.000	79.000	79.000	70.000	242.71	3.46
<b>Total Transfer:</b>	0.000	0.000	0.000	0.000	0.00	0.00
<b>Overall:</b>	79.000	79.000	79.000	70.000	242.71	3.46

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Academic Transcript

Unofficial Transcript

COURSES IN PROGRESS      [-Top-](#)

Term: Spring 2023

Subject Course Level Title				Credit Hours	Start and End Dates
LAW	595	LA	Apprenticeship	4.000	
LAW	622	LA	Secured Transactions	3.000	
LAW	631	LA	Constitutional Criminal Procedure I	2.000	
LAW	661	LA	Family Law	3.000	

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# Academic Summary Report

## Background

Applicant

Kroeger, Rachael M

Complete Date

November 02, 2019

Previous Name

State of Permanent Residence

TX

Social Security/Social Insurance #

\*\*\*\*\*0124

Undergraduate Major

BUSINESS MANAGEMENT/ADMINISTRATION

Birthdate

July 07, 1995

LSAC Account Number

L39095271

Institutions Attended	Degree	Date	Level	School Code
Abilene Christian University	BBA	05/17	U	6001

School Code	Year	Notes from Transcript
6001	16-17	Academic Honors
6001	15-16	Academic Honors
6001	14-15	Academic Honors
6001	13-14	Academic Honors,Advanced Credits



# Degree School

## Percentage Distribution of LSAT

95 & up	90-94	85-89	80-84	75-79	70-74	65-69	60-64	55-59	50-54	45-49	40-44	35-39	30-34	25-29	20-24	0-19
5	5	5	7	6	6	5	8	5	4	5	6	4	6	4	5	13

## Percentage Distribution of GPA(s)

4.00 - up	3.80-3.99	3.60-3.79	3.40-3.59	3.20-3.39	3.00-3.19	2.80-2.99	2.60-2.79	2.40-2.59	2.20-2.39	2.00-2.19	1.80-1.99	1.60-1.79	1.59- Down
16	20	19	14	13	8	5	2	0	2	3	0	0	0

# Transcript Analysis

Year	Total Hours	13-14	14-15	15-16	16-17
Education Level		U	U	U	U
College		ABILENE	ABILENE	ABILENE	ABILENE
College Code		6001	6001	6001	6001
LSAT College Mean					153
Num. Candidates					96
Semester Hours		35.0	36.0	37.0	21.0
GPA		3.91	4.00	3.84	4.00
Cum. GPA/College		3.91	3.96	3.92	3.93

Cum. GPA %ile Rank	INSF				
GPA College Mean	3.54				
Cum. Across GPA	3.91	3.96	3.92	3.93	
3.50 & Up A Hours Earned	120.0	32.0	36.0	31.0	21.0
2.50 - 3.49 B Hours Earned	9.0	3.0	0.0	6.0	0.0
1.50 - 2.49 C Hours Earned	0.0	0.0	0.0	0.0	0.0
0.50 - 1.49 D Hours Earned	0.0	0.0	0.0	0.0	0.0
0.49 & Down F Hours Earned	0.0	0.0	0.0	0.0	0.0
Unconverted Hours Earned	3.0	3.0	0.0	0.0	0.0
Total Semester Hours	132.0	38.0	36.0	37.0	21.0

# Summary

## Undergraduate Summary

Degree (Summary) GPA

3.93

Cumulative GPA

3.93

Degree Semester Hours

129.0

Cumulative Semester Hours

129.0

Nonpunitive "NC", "WF", and "Repeated" Course Credit Hours

0.0

February 21, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

It is my pleasure to recommend Ms. Rachael Kroeger, who is applying for a position in your chambers as a law clerk. She was one of my students during her first year of law school, in a full year course in Civil Procedure. She was one of my favorite students in the class, and was always able to contribute to the class conversation in ways that were both helpful and insightful when I called upon her to do so.

I have also had the pleasure of meeting and speaking with her outside of class, and have never failed to be impressed by her obviously generous assortment of personal skills. As you can see from her resume, she has an extraordinary wealth and breadth of experiences for such a young student, and I am supremely confident that she would serve you faithfully as an outstanding law clerk.

Please let me know if you have any questions, and call me at 757-339-7727 if you would like to discuss any aspect of her candidacy for this position. I hope you will give her a chance to impress you at a personal interview, and I know you will be glad that you did.

Very respectfully,

Professor James J. Duane

James Duane - jamedua@regent.edu - 757-352-4336

April 19, 2023  
Hon. Irma Ramirez  
c/o  
Administrative Office of the U.S. Courts  
OSCAR Program Office  
Oscar-support@ao.uscourts.gov

Re: Applicant Kroeger, Rachael

Dear Judge Ramirez:

This letter of recommendation comes to you in support of Ms. Kroeger application. I am pleased to write to you on her behalf. During the Fall 2022 term, Ms. Kroeger was one of seven students enrolled in my Race and the Law course. Among the students who took the course that semester were some of the top students in their law school class. Ms. Kroeger distinguished herself with respect to her class preparation and participation, earning one of the highest grades in the course.

She is an outstanding writer with superb research and analytical skills. Her enthusiasm and dedication to scholarship are also most impressive. Based upon all my interactions with her, both inside and outside of the classroom, I have found her to possess the highest levels of academic ability, personal characteristics, and intellectual capacity that qualify her for your consideration. I am pleased to offer her my highest recommendation. If you have any questions, do not hesitate to contact me at (757) 352-4852 or at gwhittico@regent.edu.

Sincerely,

Gloria A. Whittico  
Associate Professor  
Regent University School of Law  
RH 353D  
1000 Regent University Drive  
Virginia Beach, VA 23464-9800

Gloria Whittico - gwhittico@regent.edu - 757.352.4852

February 13, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I am writing to recommend Rachael Kroeger for a clerkship with your chambers. As Associate Dean of Administration and Admissions, as well as a Professor and Director of the Center for Global Justice at Regent University School of Law, I have had the pleasure of working with Rachael on several occasions—both inside and outside of the classroom.

As a student, Rachael is diligent, engaged, and attentive. She is an outstanding writer and researcher and overall has the skills to make a great law clerk. She also has great time management abilities. Her active participation on multiple Boards at the law school—while maintaining strong grades—demonstrates great initiative and self-discipline.

Rachael is also a person of character and integrity. As the Business Editor on the Journal for Global Justice and Public Policy, she has exemplified integrity in her interactions with me in my role as CFO of the law school. Most importantly, Rachael has a great attitude and is a delight to be around. She is collaborative, detail-oriented, and approaches new projects with great joy. She is also humble and receives feedback well. These attributes make her a strong worker and, in turn, a great candidate for this position.

If you have any questions, please contact me at [ewalton@regent.edu](mailto:ewalton@regent.edu) / 757-352-4315.

Thanks,

S. Ernie Walton  
Associate Dean of Administration and Admissions  
Assistant Professor  
Director, Center for Global Justice

S. Ernie Walton - [stevwa1@regent.edu](mailto:stevwa1@regent.edu) - 757.352.4315



DAVID W. LANNETTI  
CHIEF JUDGE

FOURTH JUDICIAL CIRCUIT OF VIRGINIA  
CIRCUIT COURT OF THE CITY OF NORFOLK

150 ST. PAUL'S BOULEVARD  
NORFOLK, VIRGINIA 23510

October 17, 2022

**Re: Letter of Recommendation for Rachael Kroeger**

I write in support of Rachael Kroeger's Law Clerk Application for 2023-2024. I am an adjunct professor at both the Regent University School of Law and the William & Mary Law School, and I serve as a Virginia Circuit Court Judge in Norfolk, Virginia. In the Commonwealth of Virginia, circuit courts are the state trial courts of record and are courts of general jurisdiction, hearing everything from civil cases to felony criminal cases to divorces. Circuit courts also hear appeals from both general district courts (civil, traffic, and criminal divisions) and juvenile & domestic relations district courts, which are non-record courts.

Rachael is one of my 2022 fall interns. Throughout the few months that I have known her, Rachael has demonstrated a great deal of enthusiasm and an eagerness to learn. She has embraced the internship experience by asking insightful questions and has worked hard to learn as much as possible. Based on the research assignments and memoranda that she has completed to date, she clearly has demonstrated that she is a skilled legal researcher and an exceptional writer.

Based on her performance in both law school and college, Rachael undoubtedly is gifted intellectually. Further, as demonstrated by her wide array of internship and extracurricular experiences, she is a woman of action who seeks out opportunities to lead. She clearly wants to get the most out of life and believes in the philosophy of continuous improvement. As demonstrated by her many developed talents and experiences, Rachael is an overachiever, in the best possible sense of the word.

I know that *Rachael would be an outstanding Law Clerk*, and I am confident that she will go on to become a highly successful lawyer. I hope that you will give her application serious consideration.

The Virginia Canons of Judicial Conduct require that I inform you that the opinions in this letter are my personal opinions and should not be mistaken for the official views of the Norfolk Circuit Court or my opinion as a Circuit Court Judge in the context of any specific case. Please feel free to contact me at [dlannetti@vacourts.gov](mailto:dlannetti@vacourts.gov) if you have any questions or desire any additional information.

Sincerely,

David W. Lannetti  
Chief Judge



VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

DAVID BARKLEY,

*Plaintiff,*

v.

Case Number: 22001849-00

JOSEPH JOHNSTON, MARY JONES,  
MARTHA SMITH, AND  
CHURCH OF GOD, INC.,  
an Ohio nonprofit corporation,

*Defendants.*

**BRIEF IN OPPOSITION TO DEFENDANTS' DEMURRER**

COMES NOW Plaintiff, Reverend David Barkley (“Pastor Barkley”), by counsel, and for his Brief in Opposition to the Demurrer filed by Joseph Johnston, Mary Jones, Martha Smith (“Individual Defendants”), and The Church of God, Inc. (“COG”) (collectively “Defendants”), states as follows.

**Introduction and Background**

Pastor Barkley, acting within his fiduciary duty as Secretary to COG, alerted the board to Bishop Joseph Johnston’s (“Bishop Johnston”) alleged sexual misconduct against Pastor Barkley and other church members. In response, rather than investigating the claims, Individual Defendants chose to retaliate by making several defamatory statements about Pastor Barkley. Apparently, to discredit Pastor Barkley and to protect Bishop Johnston from facing the consequences of his actions, Individual Defendants alleged that Pastor Barkley was a liar, thief, and conspirator. While Pastor Barkley was never defrocked or disciplined in any way, Defendants continued to broadcast the unfounded accusations on COG’s website, which can still be found on the website today.

Pastor Barkley filed a civil action against Defendants, alleging both defamation and defamation *per se*. In response, Defendants filed their Demurrer and brief in Opposition, to

which Plaintiff responds in Opposition. A hearing is set for June 26, 2022, at 9 AM, regarding the same.

### **Statement of Law**

A Demurrer tests the “legal sufficiency of facts alleged in pleadings” to determine whether a complaint has “a cause of action upon which the requested relief may be granted.” *Coutlakis v. CSX Transp., Inc.*, 293 Va. 212, 216, 796 S.E.2d 556, 559 (2017). If a rational jury could conclude, based upon the pleaded facts, that the complaint applies, then the Court must overrule the demurrer. *Id.* at 222, 796 S.E.2d at 562.

Generally, a Court is prohibited from exercising subject matter jurisdiction over issues regarding church governance and religious doctrine disputes. *Bowie v. Murphy*, 271 Va. 126, 133, 624 S.E.2d 74, 78 (2006). However, if a claim can be decided without addressing issues of faith and doctrine, then the Court has the proper authority. *Id.* at 135, 624 S.E.2d at 80.

An essential “gatekeeping function” of the Court is to ensure that defamation suits proceed only upon statements with the ability to defame the plaintiff, “rather than those which merely may inflame a jury to an award.” *Webb v. Virginian-Pilot Media Co., LLC*, 287 Va. 84, 90, 752 S.E.2d 808, 811 (2014). If publication of a statement is “sufficiently defamatory on its face” to permit a fact finder to determine whether it is defamatory, then the Court need not exercise its gatekeeping function. *Id.* at 91, S.E.2d at 812.

### **Legal Argument**

Plaintiff opposes Defendants’ Demurrer because (1) this Court may exercise subject matter jurisdiction over Plaintiff’s claims as it can decide the case through neutral principles of law, and (2) Plaintiff has stated sufficient facts to allege a cause of action for defamation. As a result, this Court should refrain from exercising its gatekeeping function and overrule Defendants’ Demurrer.

1. **Because the Court may exercise subject matter jurisdiction by resolving the claims through neutral principles of law without reference to faith, doctrine, or governance, and because it will not find itself caught in a religious thicket, the Court should overrule Defendants' Demurrer.**

In Virginia, the Supreme Court has held that a Court can determine matters of a case if it is done “by reference to neutral principles of law, without reference to issues of faith and doctrine.” *Bowie*, 271 Va. at 135, 624 S.E.2d at 79. The Court fleshed out a test that sets the threshold for determining whether an issue is within the scope of neutral principles of law, finding that if an issue can be determined without sending the fact finder into a “religious thicket,” then it is within the Court’s jurisdiction. *Reid v. Gholson*, 229 Va. 179, 187, 327 S.E.2d 107, 112 (1985).

It is generally true that civil courts are constitutionally prohibited from becoming a “forum for a review of ecclesiastical disputes.” *Jae-Woo Cha v. Korean Presbyterian Church*, 262 Va. 605, 610, 553 S.E.2d 511, 514 (2001). Further, Article I, § 16 of the Constitution of Virginia prohibits the Court from “evaluating or interfering in matters of internal church discipline, policy, administration, and governance.” *Id.* at 608, 553 S.E.2d at 513. However, this case does not amount to a constitutionally prohibited issue as it does not depend on inquiry into questions of faith or doctrine. *See Norfolk Presbytery v. Bollinger*, 214 Va. 500, 503, 201 S.E.2d 752, 755 (1974).

Here, the statements made about Pastor Barkley were not within the scope of church administration or governance, as he was never defrocked nor subjected to any discipline. Whereas the defamatory statements could not be separated from the employment claim in *Cha*, 262 Va. at 612, 553 S.E.2d at 516, the statements made regarding Pastor Barkley were not within the context of employment, nor were they made in a church setting regarding theological issues. Rather, the claims made better reflect those made in *Bowie*, in which the Court held that it could consider the defamation claims “in isolation, separate and apart from the church governance issue involved in Bowie’s status as a deacon.” *Bowie*, 271 Va. at 135,

624 S.E.2d at 79. Claims that Pastor Barkley was “leading a conspiracy” and attempting to “steal churches and money” do not require the Court to delve into matters of faith, doctrine, or governance to determine whether they are defamatory and, therefore, would not send the Court into a religious thicket.

Since Defendants’ statements were not made within the scope of church governance or regarding ecclesiastical matters that would cause the Court to become entangled with doctrinal issues, the Court has the proper jurisdiction to resolve the matter by utilizing neutral principles of law and should overrule Defendants’ Demurrer.

**2. This Court should refrain from accepting Defendants’ invitation to exercise its gatekeeping function because the statements may be reasonably construed to be false, defamatory, and contain the requisite sting.**

The Virginia Supreme Court held in *Webb*, 287 Va. at 89, 752 S.E.2d at 812, that the “question for the circuit court when ruling on the demurrer” is whether the statements made are “reasonably capable of the defamatory meaning [ascribed].” To determine this, the Court must exercise its essential “gatekeeping function” by ensuring that the statements made would actually harm a plaintiff rather than merely “inflame a jury to an award.” *Id.* at 91, 752 S.E.2d at 812. The *Webb* Court concluded that words printed in the article in question merely implied favoritism in coaching and, thus, did not defame the Plaintiff. *Id.*

In *Schaecher v. Bouffault*, 290 Va. 83, 91, 772 S.E.2d 589, 594 (2015), the Virginia Supreme Court held that the elements of defamation are “(1) a publication of (2) an actionable statement with (3) the requisite intent.” The Court went on to explain that the statement must be addressed to a third party, false and defamatory, and with the requisite “sting” to injure one’s reputation. *Id.* at 91-93, 772 S.E.2d at 594-95. The *Schaecher* Court found that the words alleging a potential ordinance violation does not in itself render the Plaintiff to be odious or subject to contempt, shame, or disgrace. *Id.*

Here, unlike the statements made in *Schaecher*, Defendants blatantly accused Pastor Barkley on a public website of being a liar, a cheat, and leading a conspiracy to steal churches and money. Any reasonable person would construe these words to be both damaging to one's reputation and made without merit. Whereas the statements in *Schaecher* were potentially matters of opinion, Defendants' words here were direct and unfounded accusations of morally abhorrent, criminal behavior. *See Id.* at 103, 772 S.E.2d at 600 (stating that mere opinion is not defamatory). Unlike the Court in *Webb*, the Court here should not use its "gatekeeping function" in evaluating the claims made about Pastor Barkley because the statements contain words that could be reasonably considered in their normal construction and usage as to be defamatory. The statements, which were published to COG's website, alleged that Pastor Barkley is a person capable of committing a criminal offense that leave him unfit to perform his duties, thus threatening his employment. *See Fleming v. Moore*, 221 Va. 884, 889, 275 S.E.2d 632, 635 (1981) (stating what words would be considered defamatory *per se*).

Since Defendants' statements were false, reasonably capable of defamatory meaning, and were made with the requisite "sting," the Court should not exercise its gatekeeping function and overrule Defendants' Demurrer.

### **Conclusion**

Because this Court must exercise subject matter jurisdiction since it may resolve the issues in this case through neutral principles of law without reference to faith, doctrine, or governance, and because a reasonable person can find the statements defamatory since the statements were false and made with the requisite "sting" as to damage Pastor Barkley's reputation, Plaintiff asks this Court to overrule Defendants' Demurrer.

DAVID BARKLEY

By: Rachael Kroeger  
Of Counsel

Rachael M. Kroeger (VSB No. B07367861)  
KROEGER LAW GROUP, PLLC  
1000 Regent University Drive  
Virginia Beach, VA 23464  
Telephone: (602) 696-1589  
Facsimile: (757) 555-5555  
Email: rachkro@mail.regent.edu  
*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was sent via first class mail and electronic transmission on this 20th day of June 2022 to:

John E. Howe (VSB No. 84139)  
DEWEY, CHEATHAM, AND HOWE, PLLC  
120 Byron Street  
Chesapeake, Virginia 23320  
Telephone: (757) 399-7313  
Email: john.e.howe@dch.com  
*Counsel for Defendants*

---

## Applicant Details

First Name	<b>Bogyung</b>		
Last Name	<b>Lim</b>		
Citizenship Status	<b>U. S. Citizen</b>		
Email Address	<a href="mailto:bgs11026@gmail.com">bgs11026@gmail.com</a>		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> <b>Street</b>  <b>1536 Pine Valley Blvd, Unit 5</b>  <b>City</b>  <b>Ann Arbor</b>  <b>State/Territory</b>  <b>Michigan</b>  <b>Zip</b>  <b>48104</b>  <b>Country</b>  <b>United States</b> </td> </tr> </table>	Address	<b>Street</b> <b>1536 Pine Valley Blvd, Unit 5</b> <b>City</b> <b>Ann Arbor</b> <b>State/Territory</b> <b>Michigan</b> <b>Zip</b> <b>48104</b> <b>Country</b> <b>United States</b>
Address			
<b>Street</b> <b>1536 Pine Valley Blvd, Unit 5</b> <b>City</b> <b>Ann Arbor</b> <b>State/Territory</b> <b>Michigan</b> <b>Zip</b> <b>48104</b> <b>Country</b> <b>United States</b>			
Contact Phone Number	<b>2014583111</b>		

## Applicant Education

BA/BS From	<b>New England Conservatory of Music</b>
Date of BA/BS	<b>May 2016</b>
JD/LLB From	<b>The University of Michigan Law School</b>
	<a href="http://www.law.umich.edu/currentstudents/careerservices">http://www.law.umich.edu/currentstudents/careerservices</a>
Date of JD/LLB	<b>May 1, 2023</b>
Class Rank	<b>School does not rank</b>
Law Review/Journal	<b>Yes</b>
Journal(s)	<b>Michigan Journal of Law and Society</b>
Moot Court Experience	<b>No</b>

## Bar Admission

## Prior Judicial Experience

Judicial Internships/ Externships	<b>No</b>
--------------------------------------	-----------



Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Bromberg, Howard  
hbromber@umich.edu  
734-764-5564  
Feldstein, Stuart  
stuart.feldstein@occ.treas.gov  
C.deBaca, Luis  
ldebaca@umich.edu  
734-647-4209

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Chambers of the Honorable Irma C. Ramirez  
1100 Commerce Street, Room 1567  
Dallas, Texas 75242

Dear Judge Ramirez,

I am a third-year student at the University of Michigan Law School and I am writing to apply for a clerkship in your chambers for the 2023–2024 term.

As an undergraduate cello performance major at the New England Conservatory of Music, I took a sociology course at Tufts University, which explored various contemporary socio-economic problems in America, such as vast income and wealth inequality. This course inspired me to work directly with those who are underserved to improve their lives in tangible, concrete ways. As a conservatory student, I volunteered at various social service organizations in Greater Boston, and upon graduation, I tutored and mentored immigrant and refugee students as an AmeriCorps member and worked as a paralegal at a civil legal aid organization.

My work as an AmeriCorps member and paralegal led me to law school, during which I worked as a student attorney for the Workers' Rights Clinic and the Veterans Legal Clinic, as well as a summer law clerk with the Public Defender Service for D.C and the Office of the Comptroller of the Currency. In such roles, I wrote legal memos and motions, developed litigation strategies, and engaged in court-room advocacy. My experiences have well-equipped me with legal writing and research skills as well as the ability to pay attention to detail and to work under fast deadlines that are necessary for a trial-court clerkship. Before beginning my career as a public interest attorney, I would appreciate the opportunity to learn from you and your mentorship as your law clerk.

I have attached my resume, law school transcript, and writing sample for your review. Letters of recommendation from two law school professors and an attorney at the Office of the Comptroller of the Currency are also attached:

- Professor Luis C. deBaca – email: ldebaca@umich.edu; phone: 703-470-1171
- Clinical Professor Howard Bromberg – email: hbromber@umich.edu; phone: 734-764-5564
- Mr. Stuart Feldstein – email: stuart.feldstein@occ.treas.gov

Sincerely,

Bogyung Lim

## Bogyung Lim

1536 Pine Valley Blvd. APT 5, Ann Arbor, MI 48104  
201-458-3111 • bogyungl@umich.edu

### EDUCATION

#### UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, MI

*Juris Doctor*

Expected May 2023

Honors: Dean's Scholarship (merit-based)

Activities: Senior Editor, *Michigan Journal of Law & Society*, Vol.2; Research Assistant for Professor Howard Bromberg; Public Benefits Advocacy Project (Treasurer); Asian Pacific American Law Student Association (Secretary); Michigan Parity Project (Steering Committee Member)

#### NEW ENGLAND CONSERVATORY OF MUSIC

Boston, MA

*Bachelor of Music* Cello Performance

May 2016

Additional Coursework: took classes in literature, philosophy, and sociology at Tufts University

### EXPERIENCE

#### OFFICE OF THE COMPTROLLER OF THE CURRENCY

Washington, D.C.

*Summer Law Clerk*

June 2022 – August 2022

- Researched and wrote memos on banking and consumer law issues, including enforcement actions against banks and consumer implications of banking and financial services
- Researched state responses to virtual currency activities, created tracking spreadsheet, and wrote a memo summarizing research findings

#### CENTER ON FINANCE, LAW, AND POLICY, UNIVERSITY OF MICHIGAN

Ann Arbor, MI

*Research Assistant*

September 2021 – May 2022

- Performed finance-related research, including resources for small businesses and economic trends

#### VETERANS LEGAL CLINIC, UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, MI

*Student Attorney*

January 2022 – May 2022

- Represented clients on claims relating to consumer protection, housing, and family law; developed litigation strategies, drafted legal motions, and advocated at court hearings; successfully reduced a client's child support arrearages; reached a favorable settlement allowing client to avoid eviction

#### PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA

Washington, D.C. (Remote)

*Summer Law Clerk, Civil Legal Services Division*

June 2021 – August 2021

- Researched civil legal issues that arose out of clients' involvement in the criminal justice system
- Drafted motions and case preparation documents, including case timelines and evidence summaries

#### WORKERS' RIGHTS CLINIC, UNIVERSITY OF MICHIGAN LAW SCHOOL

Ann Arbor, MI

*Student Attorney*

January 2021 – May 2021

- Represented clients who were denied unemployment insurance benefits; developed case strategies, conducted discovery, and advocated at ALJ hearings; achieved reversal of client's denial of benefits

#### VOLUNTEER LAWYERS' PROJECT OF THE BOSTON BAR ASSOCIATION

Boston, MA

*Legal Advocate*

October 2018 – March 2019

- Screened low-income clients for eligibility for legal service organizations and performed intake

#### CLASSICAL HIGH SCHOOL AND LYNN HOUSING AUTHORITY

Lynn, MA

*North Shore AmeriCorps Member*

September 2016 – July 2018

- Provided in-class academic support to ELL students in subjects of mathematics and science
- Designed curriculum and led tutoring sessions for the statewide standards-based assessment exams

### ADDITIONAL

**Interests:** Reading New Yorker profiles, playing chamber music, learning languages



Control No: E19009601

Issue Date: 05/31/2022

Page 1

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Lim.Bogyung  
Student#: 88470783



*Paul R. Larson*  
University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Towards Program	Credit Grade
---------	---------------	----------------	--------------	------------	------------	--------------	-----------------	--------------

### Fall 2019 (September 03, 2019 To December 20, 2019)

LAW	510	003	Civil Procedure	Nicholas Bagley	4.00			W
LAW	530	003	Criminal Law	JJ Prescott	4.00			W
LAW	580	004	Torts	Margo Schlanger	4.00			W
LAW	593	014	Legal Practice Skills I	Timothy Pinto	2.00			W
LAW	598	014	Legal Pract:Writing & Analysis	Timothy Pinto	1.00			W

Term Total

15.00

Cumulative Total

GPA: 0.000

0.00

### Fall 2020 (August 31, 2020 To December 14, 2020)

LAW	510	003	Civil Procedure	Len Niehoff	4.00	4.00	4.00	B+
LAW	520	003	Contracts	Kristina Daugirdas	4.00	4.00	4.00	B+
LAW	580	007	Torts	Sherman Clark	4.00	4.00	4.00	B+
LAW	593	009	Legal Practice Skills I	Howard Bromberg	2.00		2.00	S
LAW	598	009	Legal Pract:Writing & Analysis	Howard Bromberg	1.00		1.00	S

Term Total

GPA: 3.300

15.00

12.00

15.00

Cumulative Total

GPA: 3.300

15.00

12.00

15.00

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Page 2

# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Lim, Bogyung  
Student#: 88470783



*Paul R. Johnson*  
University Registrar

		Credit					
Course	Section	Load	Graded	Towards			
Subject	Number	Number	Course Title	Instructor	Hours	Hours	Program Grade
<b>Winter 2021 (January 19, 2021 To May 06, 2021)</b>							
LAW	530	002	Criminal Law	David Uhlmann	4.00	4.00	B+
LAW	540	002	Introduction to Constitutional Law	Leah Litman	4.00	4.00	B+
LAW	594	009	Legal Practice Skills II	Howard Bromberg	2.00	2.00	S
LAW	974	001	Workers' Rights Clinic I	Rachael Kohl	2.00	2.00	S
				Andrea Van Hoven			
LAW	975	001	Workers' Rights Clns Research	Rachael Kohl	1.00	1.00	S
				Andrea Van Hoven			
<b>Term Total</b>				<b>GPA: 3.300</b>	<b>13.00</b>	<b>8.00</b>	<b>13.00</b>
<b>Cumulative Total</b>				<b>GPA: 3.300</b>	<b>20.00</b>	<b>28.00</b>	
<b>Fall 2021 (August 30, 2021 To December 17, 2021)</b>							
LAW	560	001	Property	Nicolas Cornell	4.00	4.00	B
LAW	622	001	Feedback Loops	Patrick Barry	2.00	2.00	S
LAW	657	001	Enterprise Organization	Nicholas Howson	4.00	4.00	B
LAW	741	005	Interdisc Prob Solv	Luis CdeBaca	3.00	3.00	A-
			Slavery, Its Legacies, and the Built Environmt.				
<b>Term Total</b>				<b>GPA: 3.190</b>	<b>13.00</b>	<b>11.00</b>	<b>13.00</b>
<b>Cumulative Total</b>				<b>GPA: 3.261</b>	<b>31.00</b>	<b>41.00</b>	

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

Name: Lim, Bogyung  
Student#: 88470783



*Paul R. Larson*  
University Registrar

Course	Section	Load	Graded	Towards	Credit			
Subject	Number	Number	Course Title	Instructor	Hours	Hours	Program	Grade
Winter 2022 (January 12, 2022 To May 05, 2022)								
LAW	776	001A	Financ Mkts: Reg. Pol'y & Trans	Veronica Santarosa	4.00	4.00	4.00	A
				Paul Lee				
LAW	847	001	Civil Rts:Slav&Traff in Am Law	Luis CdeBaca	2.00	2.00	2.00	A-
LAW	896	001	Critical Race Theory	Juan Perea	2.00	2.00	2.00	B+
LAW	978	001	Veterans Legal Clinic	Matthew Andres	4.00		4.00	P
				Carrie Floyd				
LAW	979	001	Veterans Legal Clinic Seminar	Matthew Andres	3.00	3.00	3.00	A-
				Carrie Floyd				
Term Total				GPA: 3.736	15.00	11.00	15.00	
Cumulative Total				GPA: 3.385		42.00	56.00	
Fall 2022 (August 29, 2022 To December 16, 2022)								
Elections as of:		05/31/2022						
LAW	675	001	Federal Antitrust	Steven Cernak	3.00			
LAW	678	001A	International Finance	Veronica Santarosa	4.00			
LAW	736	001	Consr Class Actns & Cmplx Litg	Stuart Rossman	1.00			
				Daniel Karon				
LAW	756	001	Comparative Human Rights Law	John Christopher	3.00			
				McCruden				
LAW	828	001	Social Justice and the Law	Michelle Crockett	2.00			

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Total Number of Pages 3

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**UNIVERSITY OF MICHIGAN LAW**  
**Legal Practice Program**  
801 Monroe Street  
Ann Arbor, Michigan 48109-1210

Howard Bromberg  
Clinical Professor of Law

January 26, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

I recommend Bogyung Lim for a judicial clerkship with your office. Bogyung was a student in my Legal Practice course at the University of Michigan Law School in the 2020-21 academic year. Legal Practice is a year-long course which teaches first year law students the basics of legal research and writing. As part of the course, students write two memorandums, a motion, and an appellate brief on various legal issues.

As a student, Bogyung impressed me with her academic abilities. She is an excellent writer and received high marks on her memoranda and briefs. She has impressive powers of logic and reasoning and quick analytic ability. She often impressed me with the insightful comments she made in class. Given her fluency in language and logic, I was not surprised that she excelled in oral argument.

For these reasons I invited her to be a research assistant on several of my research projects. She did excellent work as my research assistant. Her work was always meticulous, conscientious and well-conceived.

Bogyung is a dedicated, personable law student. She is friendly and is welcome presence in the law school for her activity. For example, she is a senior editor of the Michigan Journal of Law & Society, treasurer of the Public Benefits Advocacy Project (Treasurer) and is secretary of the Asian Pacific American Law Student society. She is also a talented cello player. I recommend her highly for a clerkship with your chambers.

Sincerely,

/Howard Bromberg/

Howard Bromberg  
Clinical Professor of Law

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## Office of the Comptroller of the Currency

Washington, DC 20219

Letter of Recommendation: Ms. Bogyung Lim

August 31, 2022

During the summer of 2022, Bogyung Lim worked for the Office of the Comptroller of the Currency ("OCC") as a law clerk in the Bank Advisory group ("BA"). BA provides legal counsel on a broad range of activities and corporate structures for national banks, federal savings associations, federal branches and agencies. This practice includes consumer-related issues, legislative and regulatory matters, as well as securities, commodities, and corporate governance issues. Over a ten-week period, BA managers and senior staff were able to assess Ms. Lim's performance on a wide range of assignments that required legal research and the preparation of memoranda. These assignments were comparable to those given to entry-level attorneys in our honors program.

Without exception, her supervisors found Ms. Lim to be hardworking, conscientious, and capable of producing quality work product. Through her strong performance on a variety of complex assignments, Ms. Lim distinguished herself as being able to grasp quickly complex issues in financial regulation, to perform extensive legal research under minimal supervision, to exercise initiative where appropriate, and to deliver her work product within tight time limits, either in-person or through virtual media.

For example, Ms. Lim was assigned the daunting task of assembling and analyzing actions taken by each of the fifty states concerning virtual currencies. Reviewing attorneys praised Ms. Lim for being thoughtful, diligent, and thorough. She effectively researched and assembled the disparate legislation passed by each state's legislature, as well as the regulations and guidance of its banking and securities regulatory agencies. Her memorandum provided a clear picture of where each state stands on virtual currency. Supervisors found that Ms. Lim was responsive to all of their comments and suggestions. Her work culminated in a presentation to senior members of the Law Department that was praised for being informative and well-organized.

For one assignment, Ms. Lim researched the standards of proof for disparate impact cases. Attorneys found her work product to be thoughtful and well-organized. For another assignment, Ms. Lim analyzed whether res judicata served as a bar to additional remediation in matters covered by prior class action settlements. Reviewing attorneys said that Ms. Lim provided invaluable assistance in a timely manner while being receptive to feedback.

In summary, I believe that Ms. Lim would be a valuable asset to any law firm or government agency. I would very highly recommend that the OCC offer Ms. Lim an interview for our honors program for entry-level attorneys and would encourage her to apply. Should any additional information be helpful, you are welcome to contact me or John Soboeiro, Special Counsel, at (202) 649-6204.

Stuart Feldstein, Director  
Bank Advisory  
Office of the Comptroller of the Currency



**University of Michigan Law School**  
625 South State Street  
Ann Arbor, Michigan 48109-1215

**Luis C.deBaca**  
Ambassador (ret.)  
Professor from Practice

January 25, 2023

The Honorable Irma Ramirez  
Earle Cabell Federal Building and  
United States Courthouse  
1100 Commerce Street, Room 1567  
Dallas, TX 75242

Dear Judge Ramirez:

It is my pleasure to recommend Bogyung Lim to you for a judicial clerkship. She is talented and committed and will be a credit to your chambers, to the practice of law, and to the United States. As a former federal prosecutor and U.S. Ambassador, I practiced in U.S. courts and interfaced with judges at the highest levels in countries around the world, and I am convinced Bogyung will thrive in a judicial environment and will be a credit to your work; I recommend her **without reservation** and encourage her selection for this position.

I got to know Ms. Lim over the 2021-22 school year. She was a student in two of my classes. First, she was a student in my seminar on Slavery and the Built Environment, co-taught with Yale Law School and the Yale School of Architecture. The seminar sought to rethink memorialization while developing legal and policy tools to ensure exploitation-free worksites and materials inputs. Bogyung was a student leader in a class that was extra-challenging for being held simultaneously on two campuses and across several disciplines. Her collaborative and cooperative spirit with her fellow classmates – both at Michigan and Yale – engendered obvious respect for her inquisitiveness and intelligence. She brought both empathy and legal rigor to a project that pushed her out of her comfort zone to explore how law and history to embody such concepts as justice and freedom into cutting-edge conceptual architecture.

Subsequently, Ms. Lim was in my 13<sup>th</sup> Amendment seminar, which tackled tough ethical questions around slavery and trafficking. She was able to understand and balance competing equities, resolving apparent tensions between legal and normative human rights imperatives and the national security and commercial interests of the Nation. During the seminar, she once again proved inquisitive and collaborative, smart and inventive. In this more traditionally-taught course, she clearly demonstrated the ability to clearly analyze the law and facts and proffer solutions at a high level of sophistication

The seminar that Ms. Lim took with me was a hard one, with a very heavy reading load as well as practical exercises and writing projects that would make this a challenging (but hopefully rewarding) class even in a non-COVID year. She was undaunted by new concepts, the emotional weight of studying slavery, and the heavy workload of a legal history class. Ms. Lim persevered, and even excelled.

I was struck by Ms. Lim's ability to take her understanding and analysis of human trafficking in its modern statutory and administrative scheme and bridge the concepts to 19<sup>th</sup> Century New Mexico or turn-of-the-century Alaska as she read the work of District Court judges and Territorial Justices wrestling with how enslavement should be addressed under the U.S. Constitution and criminal practice after Emancipation. She displayed an impressive understanding not only of the needs of the victims represented in the historic case law, but of the judges and prosecutors who were confronted by the spectre of ongoing exploitation.

That is why I think Ms. Lim will make a great clerk – she not only can do the legal work, but is aware as well of the people

Luis C.deBaca - ldebaca@umich.edu - 734-647-4209

involved, whether litigants, parties, or judges. The collaborative leadership that she exhibited in and out of the classroom suggests strongly that she will be a supportive counterpart to her fellow clerks, a value-adding advisor to you, and more importantly a collegial colleague to court staff.

Bogyung Lim's unique instincts, analytical skills, and comfort with collaboration make her stand out, though she is not a flashy person. She is able to quickly understand the crux of complex arguments and to approach them with an open mind while nonetheless operating from a moral center that drives her to inclusive solutions. She is actively seeking out opportunities to explore tough issues of equity, inclusion, and human rights even as she successfully pursues more "traditional" law school courses. As such, I am confident that she will excel in a judicial clerkship and as a leader in the profession in the coming decades, and undeservedly offer to you my enthusiastic recommendation.

If you have any further questions, please contact me at [ldebaca@umich.edu](mailto:ldebaca@umich.edu), or 703.470.1171.

Sincerely,

Luis C.deBaca

U.S. Ambassador (ret.)  
Professor from Practice, Michigan Law School

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**Bogyung Lim**

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I prepared this appellate brief in the winter of 2021 for my 1L Legal Research and Writing class.

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## QUESTIONS PRESENTED

Is the Clean Works Initiative's Marijuana Prohibition, which imposes a substantial eligibility penalty on any program that does not maintain effective safeguards to prohibit marijuana users from employment or contract, unduly coercive, exceeding the Spending Clause power? In addition, does it further violate the Tenth Amendment?

## STATEMENT OF THE CASE

### I. Introduction

At issue is whether the Marijuana Prohibition of the Clean Works Initiative violates the Spending Clause and the Tenth Amendment. Designed to further the policy goal of protecting workers from workplace drug use, the Marijuana Prohibition imposes a substantial eligibility penalty on any program that does not maintain effective safeguards to prohibit marijuana users

from employment or contract. The effect is that it prohibits any program from employing or contracting with marijuana users or potential marijuana users from receiving infrastructure funding under the Clean Works Initiative. The Marijuana Prohibition is unconstitutional under the Spending Clause and the Tenth Amendment because it is unduly coercive, amounts to forced state legislation, and undermines the sovereignty of the state of Franklin. Thus, the Court should rule in favor of Beth Reid and the Franklin State Department of Infrastructure, the Plaintiffs-Appellants.

## II. Statement of Facts

The Works Initiative is an infrastructure funding initiative that disburses funds to qualifying state agencies. State agencies submit proposals to fund infrastructure projects. Qualifying proposals are funded at amounts set by a Program Officer at the American Infrastructure Agency (“AIA”), after approval by the Director of the AIA. Program Officers are required to use an objective, point-based rubric to evaluate a proposal. Under the Federal Works Initiative Act, the Director of the AIA can promulgate regulations for the administration of Works Initiatives. R. 31.<sup>1</sup> Each Works Initiative must be renewed every four years by the Director; otherwise, it is discontinued. R. 32.

The Standard Works Initiative (“SWI”) was such a Works Initiative. It began in 2001 and was renewed in 2008, 2012, and 2016. R. 31-32. The SWI ended in 2016 because it was deemed inadequate to further the policy goal of protecting workers from workplace drug use. R. 20. It was replaced with the Clean Works Initiative (“CWI”), which would further the goal of prohibiting workplace drug use by attaching a new condition, called the Marijuana Prohibition. According to this prohibition, a state agency’s failure to implement a marijuana

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<sup>1</sup> “R” refers to the record on appeal.

testing policy results in a thirty-five point deduction from a funding proposal's score.

Employment of marijuana cardholders by a state agency would violate this condition. R. 13.

Like the SWI, the CWI is authorized every four years to evaluate projects, and funded projects get evaluated each year. R. 22. The CWI funds many projects that were funded by the SWI; eighty percent of the CWI funding proposals had a previous portion of their infrastructure projects funded under the SWI. R. 22. The CWI authorizes the same amount of overall spending and includes the same overall rubric system for evaluating grants as the SWI. R. 32.

In addition, the CWI's application and application process are similar to those of the SWI. R. 24. As under the SWI, all CWI proposals receive a score from zero to one-hundred. A proposal that scores under sixty points is not eligible for the CWI funding. Thus, if a state does not want to comply with the Marijuana Prohibition and wants to receive the CWI funding for its infrastructure projects, the project proposals would need to score at least ninety-five points before being subjected to the thirty-five point Marijuana Prohibition deduction. For the 2016-2020 funding cycle, the median score for all states was seventy-five, the upper quartile was eighty-five, and the lower quartile was sixty-five. The CWI aims to maintain this distribution. R. 12. The Franklin State Department of Infrastructure ("FSDI") develops and submits grant proposals to the Works Initiative. Under the SWI, such proposals consistently received a score of sixty-five points, despite its best efforts. R. 26.

According to Beau Wilson ("Mr. Wilson"), the Director of the AIA, it is clearly possible for a state that failed to comply with the Marijuana Prohibition to receive the CWI funding, as "only" sixty points are needed to be funded. But it would likely need to be "a truly exceptional" one. R. 21. In addition, Mr. Wilson suggests that even if a state does not receive

the CWI funding, it could fund its infrastructure from other sources. He claims “the overwhelming majority of states fund most of their infrastructure by state taxes, not federal money.” R. 21.

Franklin is not among such states. It largely depends on federal grants to fund its infrastructure projects, including several critical multi-year infrastructure projects that are ongoing. R. 25. \$200 million of Franklin’s \$250 million annual infrastructure budget comes from the CWI funding. R. 25. Franklin’s financial viability depends in part on its infrastructure. Since the financial crisis, Franklin has been struggling to regain its financial stability, and Franklin’s tourism industry, which requires adequate infrastructure, drives its economy. R. 16, 25. In the upcoming year, Franklin may be able to use \$100 million freed up from the closure of University of Franklin for its infrastructure budget, subject to the state assembly’s approval. R. 26.

Beth Reid (“Ms. Reid”) was employed as a contracted program coordinator by the FSDI, Federal Works Initiative branch. After five years of employment, the FSDI did not renew Ms. Reid’s contract because she is a medical marijuana card holder, despite great work ethic and work results. R. 15, 16. If Ms. Reid was employed by the FSDI, its proposals would be subject to the thirty-five points Marijuana Prohibition deduction.

If Franklin complies with the Marijuana Prohibition, it cannot employ users or potential users of medical marijuana. Franklin, however, was one of the first states to legalize medical marijuana. It led the way for other fifty states to legalize medical marijuana use. R. 17.

### III. Procedural History

On October 15, 2020, Ms. Reid and the FSDI filed a lawsuit against the AIA and Mr. Wilson (“Defendants”), seeking a declaration that the CWI eligibility requirements are

unconstitutional and Defendants violated the Spending Clause and the Tenth Amendment of the United States Constitution. They also sought a mandatory injunction prohibiting Defendants' enforcement of the Marijuana Prohibition as well as other relief as the Court may deem proper. Defendants filed a motion for summary judgment on November 28, 2020, and Plaintiffs opposed the motion on November 30, 2020. The United States District Court for the District of Franklin granted Defendants' motion for summary judgment, and Plaintiffs timely appealed on December 20, 2020.

### STANDARD OF REVIEW

This appeal is from the district court's grant of summary judgment. Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In determining whether summary judgment should be granted, a court must draw all reasonable inferences against the moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). On appeal, the court reviews summary judgments de novo. See Deshazer v. Arco Oil & Gas Co., 167 F.3d 537 (5th Cir. 1998).

### ARGUMENT

#### I. THE MARIJUANA PROHIBITION IS UNDULY COERCIVE, EXCEEDING THE SPENDING CLAUSE POWER.

The Marijuana Prohibition is unduly coercive thereby violating the Spending Clause because it fails to satisfy the multi-factor test laid out in South Dakota v. Dole, 483 U.S. 203, 206–12 (1987). According to Dole, a condition attached to a federal grant to states does not violate the Spending Clause if it meets the following five conditions: (1) it is in pursuit of general welfare; (2) Congress unambiguously conditions the states' receipt of federal funds;



(3) there is a reasonable nexus between the program's objectives and conditions; (4) it complies with other constitutional provisions; and (5) it is not unduly coercive. Id.

The Marijuana Prohibition is unduly coercive for two reasons. First, the Marijuana Prohibition makes the CWI different in kind, not merely in degree, from the SWI, and it threatens to withhold too much of Franklin's existing SWI grant money. Second, Franklin has no choice but to participate in the CWI and thus be subject to the Marijuana Prohibition. Since the Marijuana Prohibition is unduly coercive, it fails to meet the fifth factor of the Dole test. As such, the Marijuana Prohibition violates the Spending Clause.

**A. The Marijuana Prohibition is a condition that is different in kind from purposes of existing grants and threatens to withhold too much of Franklin's existing grant money.**

NFIB v. Sebelius, 567 U.S. 519, 523 (2012) held that a condition is coercive if (1) it is different in kind from purposes of existing grants; and (2) threatens to withhold too much of a state's existing grant money. As the Marijuana Prohibition satisfies these two factors, it is coercive.

In NFIB, the Court held that the expanded Medicaid program is a shift in kind, not merely in degree, from the old Medicaid program. 567 U.S. at 523. Medicaid originally provided for four particular categories of the needy, but the Medicaid expansion, which was designed to meet the needs of the entire nonelderly population with income below 133 percent of the poverty level, transformed the program into a universal health insurance coverage plan. Id.

Like the Medicaid expansion, the CWI is a shift in kind from the SWI. Whereas the CWI was designed to further the policy goal of protecting workers from workplace drug use,

the SWI was not designed to further such a goal. Indeed, the reason that the SWI was replaced with the CWI is that the SWI was deemed inadequate in protecting workers from workplace drug use. The CWI is not merely a program that provides infrastructure grants to the states; it is also a program that protects workers from workplace drug use. With the addition of the Marijuana Prohibition, the CWI becomes a new program that is different in kind from the SWI.

The CWI and the SWI share several attributes, but none are enough to constitute the CWI as a program different in degree. Like the SWI, the CWI is authorized every four years to evaluate projects, and funded projects get evaluated each year. The CWI application is similar to the SWI application. In addition, both authorize the same amount of overall spending and include the same rubric system for evaluating grants. Finally, the CWI funds many projects that were funded by the SWI; eighty percent of the CWI funding proposals had a previous portion of their infrastructure projects funded under the SWI.

But the fact that the CWI and the SWI share several attributes does not mean the CWI and the SWI are similar in kind. The Medicaid expansion and the old Medicaid program also shared attributes. For example, the expanded Medicaid program also insured those who were insured under the old Medicaid program—the disabled, the blind, the elderly, and needy families with dependent children. *Id.* at 519. Yet the Court in *NFIB* deemed the expanded Medicaid different in kind from the old Medicaid program. *Id.* at 523. In insuring the entire nonelderly population with income below 133 percent of the poverty level, the expanded Medicaid program assumed a fundamentally different objective than that of the old Medicaid program. *Id.* Similarly, in adopting the Marijuana Prohibition, the CWI assumed a fundamentally different objective than that of the SWI. With the prohibition, the CWI does not

merely purport to provide grants for state infrastructure projects; it also purports to protect workers from workplace drug use.

The Marijuana Prohibition is not a comparable consideration in the grant process due to the magnitude of the penalty it imposes. Whereas the CWI penalizes states for proposing projects that do not have a plan for finishing in ten years by deducting two points, a proposal that fails to adhere to the Marijuana Prohibition is subject to a thirty-five point deduction—more than fourteen times as much. Having a plan for finishing a project in ten years is more relevant to administering an infrastructure grant program than prohibiting workplace drug use. The AIA, however, placed a much greater penalty on the violation of the Marijuana Prohibition, making it clear that protecting workers from workplace drug use is one of the core objectives of the CWI, alongside the objective of providing states with infrastructure grants. Protecting workers from workplace drug use was not, however, one of the core objectives of the SWI; the CWI replaced the SWI because the SWI was deemed “inadequate to further . . . the protection of hardworking Americans from workplace drug use.” Just as the objectives of the Medicaid expansion and the old Medicaid differ, the objectives of the CWI and the SWI differ. As such, the CWI is a program that is different in kind from the SWI, and therefore unconstitutionally coercive.

Next, the Marijuana Prohibition is a condition that threatens to withhold too much of Franklin’s existing grant money, which also makes it unduly coercive. In NFIB, the Court held that if a state declines to implement the Medicaid expansion, the federal government cannot threaten to withhold too much of a state’s existing funds for the old Medicaid program as it could constitute coercion. Id. at 581. Similarly, Dole held that if the federal government threatens to withhold too much of a state’s existing funds, it amounts to impermissible

coercion, whereas withholding a small amount of funding only amounts to mild encouragement. 483 U.S. at 217.

Here, the federal government threatens to withhold too much of Franklin's existing funds by enacting the Marijuana Prohibition. Franklin's annual infrastructure budget is \$250 million, \$200 million of which comes from the CWI funding. Thus, if Franklin does not comply with the Marijuana Prohibition, it risks losing eighty percent of its infrastructure funding. This contrasts with Dole, in which the Court held that the federal government did not commit coercion in threatening to withhold five percent of the state's highway funding, as that amount was too small and thus only amounted to mild encouragement. Id. In enacting the Marijuana Prohibition, the federal government is intimidating Franklin with the prospect of operating with only twenty percent of its usual infrastructure funding, which would make completing ongoing infrastructure projects, let alone maintaining existing infrastructure, impossible. This is not mere "mild encouragement" to Franklin to comply with the Marijuana Prohibition; it is a threat to withhold too much of Franklin's existing grant money. Whereas withholding five percent of its total infrastructure budget is insignificant, per Dole, withholding eighty percent of its total infrastructure budget is clearly too much, considering that building and maintaining infrastructure is not a luxury, but a necessity, for any state. Thus, the Marijuana Prohibition, which threatens to withhold too much of Franklin's existing grant money, is coercive.

**B. The state of Franklin has no choice but to participate in the Clean Works Initiative and thus be subject to the Marijuana Prohibition.**

The state of Franklin has to participate in the CWI, because it depends on the CWI for its infrastructure funding and has no viable funding alternatives. Franklin cannot receive the